AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO



FEDERAL REGISTER

Vol. 89 Tuesday,

No. 242 December 17, 2024

Pages 101837–102672

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 89 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 89, No. 242

Tuesday, December 17, 2024

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service

Animal and Plant Health Inspection Service
RULES
Agricultural Bioterrorism Protection Act of 2002:
Biennial Review and Republication of the Select Agent and Toxin List, 101837–101846

Centers for Disease Control and Prevention
NOTICES
Expansion of National Institute for Occupational Safety and Health B Reader Certification Eligibility, 102147
Hearings, Meetings, Proceedings, etc., 102148–102149
Requests for Nominations:
Clinical Laboratory Improvement Advisory Committee, 102148

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 102149
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 102150

Coast Guard
RULES
Mariner Credentialing Program Transformation, 102298–102340
Safety and Security Zone:
Pilgrim Nuclear Power Plant, Plymouth, MA, 101892–101893
Safety Zone:
West Passage Narragansett Bay, Jamestown, RI, 101889–101892
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 102152–102153

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Childcare Benefit Forms, 102118–102119

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 102119–102123
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certain Federal Acquisition Regulation Part 9 Requirements, 102145–102147

Drug Enforcement Administration
NOTICES
Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs:
List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024, 102638–102649
Established Aggregate Production Quotas:
Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2025, 102649–102662

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Private School Universe Survey 2025–26 and 2027–28 Data Collections, and 2027–28 Private School Universe Survey Frame Development Activities, 102123

Election Assistance Commission
RULES
Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 101837

Energy Department
See Federal Energy Regulatory Commission
RULES
Privacy Act; Implementation of Exemptions, 101846–101854
NOTICES
Preventing Outages and Enhancing the Resilience of the Electric Grid Formula Grants to States and Indian Tribes, 102123–102125

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Pennsylvania; Redesignation of Portions of Westmoreland and Cambria Counties for the 2010 Sulfur Dioxide NAAQS, 101910–101913
Texas; Rusk and Panola Counties Nonattainment Area; Finding of Failure to Attain the Primary 2010 One-Hour Sulfur Dioxide Standard, 101894–101896
Washington; Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County 2010 SO2 Nonattainment Area, 101896–101901
Findings of Failure to Attain and Reclassification:
Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone NAAQS, 101901–101910
Pesticide Tolerance; Exemptions, Petitions, Revocations, etc.:
Brevibacillus Laterosporus Mpp75Aa1.1 and Bacillus Thuringiensis Vpb4Da2 Proteins, 101938–101941
Regulation under the Toxic Substances Control Act:
Trichloroethylene, 102568–102635

Water Quality Standards:
Establishment of a Numeric Criterion for Selenium for the State of California, 101914–101938
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
New Jersey; Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit), and Air Emission Control and Permitting Exemptions, 102034–102046
Significant New Uses:
Certain Chemical Substances (24–3.5e), 102046–102074
NOTICES
Air Pollution Control Cost Manual:
Dry Sorbent Injection, 102137–102138
Permits; Applications, Issuances, etc.:
Final National Pollutant Discharge Elimination System Pesticide General Permit for Point Source Discharges from the Application of Pesticides; Reissuance, 102134–102137
Pesticide Product Registration:
Requests to Voluntarily Cancel Certain Pesticide Registrations and/or Amend to Terminate Certain Uses, 102138–102140
Proposed Settlement Agreement, Stipulation, Order, and Judgment, etc.:
Licking Chemical Spill Site, Licking County, OH, 102141

Export-Import Bank
NOTICES
Categorical Exclusions from the Department of Energy under the National Environmental Policy Act, 102141–102144

Federal Aviation Administration
RULES
Foreign Air Operator Certificates issued by a Regional Safety Oversight Organization, 101870–101880
Special Conditions:
BETA Technologies Inc. Model H500A Electric Engines, 101854–101870
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 102016–102019
The Boeing Company Airplanes, 102019–102022

Federal Communications Commission
NOTICES
In the Matter of 2,411 Robocall Mitigation Database Filers, 102144

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 102144

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 102125–102126, 102133
Meetings; Sunshine Act, 102126–102127
Permits; Applications, Issuances, etc.:
Kram Hydro 8, LLC, 102127
Petition for Declaratory Order:
DCP Operating Co., LP, 102125
Scoping Period:
Rover Pipeline LLC; Environmental Issues for the Proposed Rover-Bulger Compressor Station and Harmon Creek Meter Station Expansion Project, 102127–102133

Federal Highway Administration
NOTICES
Efficient Environmental Reviews for Project Decisionmaking and One Federal Decision Interim Final Guidance, 102246–102248
Final Federal Agency Action:
Proposed Highway Projects in Texas, 102244–102246

Federal Railroad Administration
NOTICES
Efficient Environmental Reviews for Project Decisionmaking and One Federal Decision Interim Final Guidance, 102246–102248

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 102144–102145

Federal Transit Administration
NOTICES
Efficient Environmental Reviews for Project Decisionmaking and One Federal Decision Interim Final Guidance, 102246–102248
Final Policy Guidance:
Capital Investment Grants Program, 102248

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Species:
Status for Suckley's Cuckoo Bumble Bee, 102074–102091
NOTICES
Permits; Applications, Issuances, etc.:
Endangered and Threatened Species, 102156–102160
Proposed Habitat Conservation Plan for the Sand Skink; Polk County, FL; Categorical Exclusion, 102160–102161

Food and Nutrition Service
RULES
Supplemental Nutrition Assistance Program:
Program Purpose and Work Requirement Provisions of the Fiscal Responsibility Act, 102342–102395

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certain Federal Acquisition Regulation Part 9 Requirements, 102145–102147

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Indian Health Service
See National Institutes of Health
RULES
Biennial Review of the List of Select Agents and Toxins:
Possession, Use, and Transfer of Select Agents and Toxins, 101941–101952
Health Data, Technology, and Interoperability:
Protecting Care Access, 102512–102565

Homeland Security Department
See Coast Guard
See Transportation Security Administration
See U.S. Customs and Border Protection

Housing and Urban Development Department
RULES
2020 Core Based Statistical Area Standards; Correction, 101880–101881

Indian Health Service
NOTICES
Proposed Purchased/Referred Care Delivery Area Redesignation:
Chippewa Cree Tribe of the Rocky Boy's Reservation, 102150–102151

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
RULES
Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Correction, 101881

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Aluminum Foil from the People's Republic of China, 102107–102109
Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium, 102106–102107
Certain Collated Steel Staples from the People's Republic of China, 102104–102105
Certain Corrosion-Resistant Steel Products from the Republic of Korea, 102109–102111
Float Glass Products from the People's Republic of China and Malaysia, 102113–102114
Silicomanganese from India, Kazakhstan, and Venezuela, 102105–102106
Truck and Bus Tires from Thailand, 102111–102113

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Circular Welded Carbon-Quality Steel Pipe from China, 102163
Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam, 102163

Justice Department
See Drug Enforcement Administration
See Prisons Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Grants Management System (JustGrants System), 102164
Proposed Consent Decree:
Clean Air Act, 102163–102164

Labor Department
See Wage and Hour Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Resource Justification Model, 102164–102165

Land Management Bureau
NOTICES
Hearings, Meetings, Proceedings, etc.:
Missouri Basin Resource Advisory Council, 102162
Wyoming Resource Advisory Council, 102161–102162

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certain Federal Acquisition Regulation Part 9 Requirements, 102145–102147

National Endowment for the Humanities
NOTICES
Hearings, Meetings, Proceedings, etc.:
Humanities Panel, 102165

National Foundation on the Arts and the Humanities
See National Endowment for the Humanities

National Highway Traffic Safety Administration
RULES
Implementing the Whistleblower Provisions of the Vehicle Safety Act, 101952–101993

National Institutes of Health
NOTICES
Hearings, Meetings, Proceedings, etc.:
National Eye Institute, 102152
National Institute of Allergy and Infectious Diseases, 102151–102152
Office of the Director, 102151

National Oceanic and Atmospheric Administration
RULES
Confidentiality of Information, 102000–102015
Endangered and Threatened Species:
Reclassification of Pillar Coral (Dendrogyra cylindrus) from Threatened to Endangered, 101993–102000
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Fishery Management Plan of Puerto Rico; Triggerfish Management Measures, 102100–102103
Seafood Import Procedures and Certification of Admissibility, 102091–102100
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Coastal and Estuarine Land Conservation Planning, Protection or Restoration, 102114–102115
Permits; Applications, Issuances, etc.:
Marine Mammals; File No. 28286, 102117–102118
Marine Mammals; File No. 28533, 102118
Requests for Nominations:
National Sea Grant Advisory Board, 102116–102117
Taking or Importing of Marine Mammals:
Vineyard Northeast Offshore Wind Project Offshore of Massachusetts and Connecticut, 102115–102116

National Science Foundation
NOTICES
Permits; Applications, Issuances, etc.:
Antarctic Conservation Act, 102165–102166

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 102166–102167

Nuclear Regulatory Commission
NOTICES
Licenses; Exemptions, Applications, Amendments, etc.:
Kansas State University, 102167–102170

Nuclear Waste Technical Review Board
NOTICES
Performance Review Board Members, 102170

Personnel Management Office
RULES
Administrative Leave, Investigative Leave, and Notice Leave, 102256–102295
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Agency Service Delivery, 102171

Postal Regulatory Commission
NOTICES
New Postal Products, 102172–102176

Postal Service
NOTICES
Product Change:
Priority Mail and USPS Ground Advantage Negotiated Service Agreement, 102177, 102179, 102182–102184, 102186, 102189–102195
Priority Mail Express, Priority Mail, and USPS Ground Advantage Negotiated Service Agreement, 102177–102195
USPS Ground Advantage Negotiated Service Agreement, 102195

Presidential Documents
ADMINISTRATIVE ORDERS
China Censorship Monitor and Action Group; Establishment (Memorandum of December 12, 2024), 102663–102667
Countering Economic Coercion Task Force; Establishment (Memorandum of December 12, 2024), 102669–102671

Prisons Bureau
RULES
Federal Tort Claims Act:
Technical Changes, 101881–101882
Inmate Legal Activities:
Visits by Attorneys, 101882–101884
PROPOSED RULES
Inmate Financial Responsibility Program:
Procedures, 102022–102031

Securities and Exchange Commission
NOTICES
Application:
MX2 LLC, 102214–102215
Self-Regulatory Organizations; Proposed Rule Changes:
Fixed Income Clearing Corp., 102207, 102234–102238
Nasdaq BX, Inc., 102199–102211
Nasdaq GEMX, LLC, 102223–102231
Nasdaq ISE, LLC, 102215–102223
Nasdaq PHLX LLC, 102238–102241
National Securities Clearing Corp., 102211–102214
NYSE Chicago, Inc., 102231–102234
The Depository Trust Co., 102195–102199

Small Business Administration
RULES
HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs, 102448–102510

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition:
Anne Frank, 102241–102242

Susquehanna River Basin Commission
NOTICES
Hearings, Meetings, Proceedings, etc.:
Actions Taken, 102242–102243
Minor Modification, 102243
Projects Approved:
Consumptive Uses of Water, 102242

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
RULES
Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs, 102398–102445
NOTICES
Federal Flood Risk Management Standard Interim Guidelines, 102248–102252

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Sensitive Security Information Threat Assessment Application, 102155–102156

Treasury Department
See Internal Revenue Service
RULES
Privacy Act Exemptions, 101887–101889
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Meaningful Access, 102252–102253

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Declaration for Free Entry of Returned American Products, 102154–102155
Documentation Requirements for Articles Entered under Various Special Tariff Treatment Provisions, 102153–102154

Veterans Affairs Department
PROPOSED RULES
Waiver of Charges for Copayments, 102031–102034
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Request for Determination of Reasonable Value Real Estate, 102254
Survey of Veteran Enrollees' Health and Use of Health Care, 102253–102254

Wage and Hour Division
RULES
Tip Regulations under the Fair Labor Standards Act: Restoration of Regulatory Language, 101884–101887

Separate Parts In This Issue

Part II
Personnel Management Office, 102256–102295

Part III
Homeland Security Department, Coast Guard, 102298–102340

Part IV
Agriculture Department, Food and Nutrition Service, 102342–102395

Part V
Transportation Department, 102398–102445

Part VI
Small Business Administration, 102448–102510

Part VII
Health and Human Services Department, 102512–102565

Part VIII
Environmental Protection Agency, 102568–102635

Part IX
Justice Department, Drug Enforcement Administration, 102638–102662

Part X
Presidential Documents, 102663–102667, 102669–102671

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

2 CFR
5801 101837

3 CFR
Administrative Orders:
Memorandums:
Memorandum of December 12, 2024 102665
Memorandum of December 12, 2024 102669

5 CFR
630 102256
752 102256

7 CFR
271 102342
273 102342
331 101837

9 CFR
121 101837

10 CFR
1008 (2 documents) 101846, 101850

13 CFR
121 102448
124 102448
125 102448
126 102448
127 102448
128 102448
134 102448

14 CFR
33 101854
129 101870
382 102398
Proposed Rules:
39 (2 documents) 102016, 102019

24 CFR
5 101880

26 CFR
1 101881

28 CFR
543 (2 documents) 101881, 101882
Proposed Rules:
545 102022

29 CFR
531 101884

31 CFR
1 101887

33 CFR
165 (2 documents) 101889, 101892

38 CFR
Proposed Rules:
17 102031

40 CFR
52 (2 documents) 101894, 101896
81 (3 documents) 101896, 101901, 101910
131 101914
174 101938
751 102568
Proposed Rules:
52 102034
721 102046

42 CFR
73 101941

45 CFR
171 102512

46 CFR
1 102298
10 102298
11 102298
12 102298
13 102298
14 102298
15 102998
16 102998

49 CFR
513 101952

50 CFR
223 101993
224 101993
600 102000
Proposed Rules:
17 102074
216 102091
300 102091
622 102100
635 102091

Rules and Regulations

Federal Register
Vol. 89, No. 242
Tuesday, December 17, 2024

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

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

ELECTION ASSISTANCE COMMISSION

2 CFR Part 5801

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

AGENCY: Election Assistance Commission.

ACTION: Final rule.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing this final rule to formally adopt the Office of Management & Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations for EAC grants management, which is already included in the EAC's agreements with its grant recipients.

DATES: This final rule is effective December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Camden Kelliher, EAC General Counsel. Phone: 202–360–3160, email: *ckelliher@eac.gov.*

SUPPLEMENTARY INFORMATION: Through its terms and conditions of its grant awards, the EAC requires grant award recipients and sub-recipients to abide by all federal financial assistance requirements, including 2 CFR part 200. The EAC already has regulations adopting 2 CFR part 180, which can be found at 2 CFR part 5800.

On April 4, 2024, the Office of Management & Budget (OMB) issued memorandum M–24–11, Reducing Burden in the Administration of Federal Financial Assistance in effort to provide government-wide direction to federal agencies on improving the management of federal financial assistance and to ensure the consistent management of such assistance. On April 22, 2024, OMB issued a final rule officially revising its regulations pertaining to federal financial assistance management in title 2 of the CFR and requiring agencies to implement the newly revised regulations as quickly as possible by taking appropriate steps to ensure the regulations apply to all federal financial awards issued on or after October 1, 2024.

The Help America Vote Act of 2002 limits the EAC's rulemaking authority to only to the extent permitted under Section 9(a) of the National Voter Registration Act. However, the EAC in this instance is ''adopting'' 2 CFR part 200—the EAC is not ''making'' rules. Furthermore, 2 CFR 200.106 states agencies awarding federal funds must implement the OMB guidance in 2 CFR in codified regulations.

Waiver of Proposed Rulemaking

The rule issued by the EAC concerns matters relating to ''grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2), and is therefore exempt from the requirement of prior notice and comment.

Waiver of Delayed Effective Date

Under 5 U.S.C. 553(d), agencies may waive the delayed effective date requirement if they find good cause and explain the basis for the waiver in the final rulemaking document or if the regulations grant or recognize an exemption or relieve a restriction.

OMB informed the public on April 4, 2024, that agencies would be required to adopt the Uniform Guidance and make it effective by October 1, 2024. The public has had significant time to prepare for the promulgation of these final regulations. As such, the EAC has determined there is good cause to waive the delayed effective date.

List of Subjects in 2 CFR Part 5081

Accounting, administrative practice and procedure, federal financial assistance, grant programs, grants administration, state and local governments, state-federal relations.

■ For the reasons stated, Part 5801 is established in Chapter LVIII of Title 2 of the Code of Federal Regulations to read as follows:

PART 5801—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Sec.

5801.10 Adoption of 2 CFR part 200
5801.20 through 5801.99 [Reserved].

Authority: 2 CFR part 200.

§ 5801.10 Adoption of 2 CFR Part 200.

The U.S. Election Assistance Commission adopts the Office of Management and Budget (OMB) Guidance in 2 CFR part 200. Thus, this part gives regulatory effect to the OMB guidance.

§§ 5801.20 through 5801.99 [Reserved].

Camden Kelliher,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–29685 Filed 12–16–24; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

9 CFR Part 121

[Docket No. APHIS–2019–0018]

RIN 0579–AE52

Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List

AGENCY: Animal and Plant Health Inspection Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: In accordance with Title II, Subtitle B of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (which is cited as the ''Agricultural Bioterrorism Protection Act of 2002'' and referred to as the Act), we are amending and republishing the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products. The Act requires the biennial review and republication of the list of select agents and toxins (the list) and the revision of the list as necessary. This action implements the findings from the biennial review of the list. The biennial review was initiated within 2 years of the completion of the previous biennial review. This final rule will focus solely on removing from the select agent list the following pathogens: *Peronosclerospora philippinensis (Peronosclerospora sacchari)* (Plant

Protection and Quarantine select agent), African horse sickness virus (Veterinary Services select agent), and *Brucella abortus, Brucella suis,* and *Brucella melitensis* (overlap select agents).

DATES: Effective January 16, 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Jacek Taniewski, DVM, Director, Division of Agricultural Select Agents and Toxins, ERCS, APHIS, 4700 River Road, Riverdale, MD 20737; (301) 851–3352; *jacek.taniewski@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, as amended (referred to below as the Bioterrorism Response Act or the Act) provides for the regulation of certain biological agents and toxins that have the potential to pose a severe threat to human, animal, and plant health, or to animal and plant products. The Animal and Plant Health Inspection Service (APHIS) has the responsibility for implementing the provisions of the Bioterrorism Response Act within the U.S. Department of Agriculture (USDA). Veterinary Services (VS) select agents and toxins, listed in 9 CFR 121.3, are those that have been determined to have the potential to pose a severe threat to animal health or animal products. Plant Protection and Quarantine (PPQ) select agents and toxins, listed in 7 CFR 331.3, are those that have been determined to have the potential to pose a severe threat to plant health or plant products. Overlap select agents and toxins, listed in 9 CFR 121.4, are those that have been determined to pose a severe threat to public health and safety, to animal health, or to animal products. Overlap select agents are subject to regulation by both APHIS and the Centers for Disease Control and Prevention (CDC), which has the primary responsibility for implementing the provisions of the Act for the U.S. Department of Health and Human Services (HHS). Together, APHIS and CDC comprise the Federal Select Agent Program (FSAP).

Title II, Subtitle B of The Public Health Security and Bioterrorism Preparedness and Response Act of 2002, as amended, (which is cited as the ''Agricultural Bioterrorism Protection Act of 2002,'' and referred to below as the Act), section 212(a)(1)(A) (7 U.S.C. 8401(a)(1)(A)), provides, in part, that the Secretary of Agriculture (the Secretary) ''shall by regulation establish and maintain a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products.''

In determining whether to include an agent or toxin in the list, the Secretary shall consider the following criteria stated in the Act (7 U.S.C. 8401(a)(1)(B)):

- ''[T]he effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;''
- ''[T]he pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants;''
- ''[T]he availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin;''
- ''[W]hether such inclusion would have a substantial negative impact on the research and development of solutions for the animal or plant disease caused by the agent or toxin; and whether the negative impact [on research and development] would substantially outweigh the risk posed by the agent or toxin to animal or plant health if it is not included on the list'' (added by the 2018 Farm Bill); and
- ''[A]ny other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.''

Paragraph (a)(2) of section 212 of the Act (7 U.S.C. 8401(a)(2)) requires the Secretary to review and republish the list of select agents and toxins every 2 years and to otherwise revise the list as necessary. To fulfill this statutory mandate, APHIS convenes separate interagency working groups in order to review the lists of PPQ and VS select agents and toxins, as well as any overlap select agents and toxins, and develop recommendations regarding possible changes to the list using the five criteria for listing, stated above, found in the Act. APHIS and CDC coordinate on the biennial review for overlap select agents and toxins that have been determined to pose a severe threat to human and animal health or animal products.

On March 17, 2020, we published in the **Federal Register** (85 FR 15078–01, Docket No. APHIS–2019–0018) an advance notice of proposed rulemaking (ANPR) [1] and request for comments in which we solicited public comment on the possible delisting of one PPQ select agent, *Peronosclerospora philippinensis (P. sacchari),* one VS select agent, African horse sickness virus, and five overlap select agents, *Bacillus anthracis* (Pasteur strain), *Brucella abortus, B. suis,* and *B. melitensis,* and Venezuelan equine encephalitis virus. We discussed the comments received on the ANPR in the proposed rule that followed. On January 30, 2024, we published in the **Federal Register** (89 FR 5795–5819, Docket No. APHIS–2019–0018) a proposal [2] to amend and republish the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products. We proposed to delist P. philippinensis (*sacchari),* African horse sickness virus, *B. abortus, B. suis,* and *B. melitensis.*

In the proposed rule, we also proposed additional changes to the regulations beyond those discussed in the ANPR. Certain of these changes were, in our assessment, codifications of existing operational policy. These included provisions related to: Discovery of a select agent or toxin, disposal of select agent waste after conclusion of patient care, the exclusion of animals naturally infected with select agents from the requirements of the regulations, allowing individuals other than the responsible official (*e.g.,* principal investigators) to revise inactivation procedure documentation, removal procedures, and the content of annual internal inspections.

Other changes were intended as clarifications of existing provisions of the regulations. These included proposed definitions of loss, release, and theft, clarifying reporting requirements for ''discovered'' select agents or toxins, a clarification regarding what constitutes an acceptable ''validated inactivation procedure,'' clarifications related to the existing reporting requirements, clarifying that certificates must accompany transfers of a select agent or toxin, including intra-entity transfers, clarifying that the documentation in the IT system for the FSAP program serves as official records required by the regulations, clarifying the documentation that may be needed for the issuance of a certificate of registration, clarifying that a responsible official cannot be approved as the responsible official at more than one registered entity and cannot be the sole alternate responsible official at another registered entity, clarifying requirements related to restricted experiments, clarifying the notification requirements for changes to the application for registration, and clarifying the scope of pre-access suitability assessments.

[1] To view the ANPR and the comments we received, go to *www.regulations.gov.* Enter APHIS–2019–0018 in the Search field.

[2] To view the proposed rule and the comments we received, go to *www.regulations.gov.* Enter APHIS–2019–0018 in the Search field.

Finally, certain proposed provisions would have been new, including provisions regarding effluent decontamination system, biosafety provisions for facility verification requirements for registered biosafety level 3 and animal biosafety level 3 laboratories, and a new requirement related to restricted experiments.

We solicited comments concerning our proposal for 60 days, ending April 1, 2024. We received 69 comments by that date. The comments were from private citizens, research institutions, organizations representing research institutions, organizations representing the domestic cattle, bison, and equine industries, representatives from State fish and wildlife departments, and representatives from State departments of agriculture.

While commenters largely supported our proposed amendments to the list of select agents and toxins, commenters raised legal, operational, and policy concerns about many of our proposed codifications, clarifications, and additions to the regulations.

We proposed to delist *P. philippinensis,* African horse sickness virus, *B. abortus, B. suis,* and *B. melitensis* as select agents, and the comments we received regarding these select agents are discussed below.

P. philippinensis

We received one comment specifically addressing *P. philippinensis.* The commenter supported delisting *P. philippinensis,* citing cultivation characteristics that would make propagation difficult and unlikely to produce a dangerous agent. We did not receive any comments stating an opposition to delisting. Accordingly, we are delisting *P. philippinensis* as proposed.

African Horse Sickness (AHS) Virus

We received two comments specifically addressing AHS virus.

One commenter agreed with delisting, citing limited communicability and the existence of countermeasures. Another commenter opposed delisting, citing the widespread presence of the disease's vectors in the United States, the high mortality rate for animals associated with the disease, and the absence of available vaccines for AHS virus within the United States. The commenter did acknowledge that vaccines were available internationally but stated that there were no guidelines for their use within the United States, nor did they think APHIS would authorize their use in the event of an outbreak. The commenter further stated that, even if APHIS were to authorize their use in the event of a domestic outbreak of AHS virus, the specific serotype would need to be identified, and a monovalent vaccine procured from a foreign source, which could take months.

We agree that AHS virus causes a life-threatening, hemorrhagic, noncontagious, nonzoonotic, arthropod-borne viral disease of equines. However, the Act's aim is not solely to determine whether a pathogen causes deadly disease, but whether it is likely to be used as a bioterrorism agent, and if used, what the potential impacts would be. In that regard, in deciding whether an agent or toxin should be included on the select agent and toxin list, the Act requires us to take into consideration not only the pathogenicity of the agent, but also the methods by which it is disseminated, and the availability and effectiveness of prophylaxis as well as treatments, such as vaccines and pharmaceuticals.

AHS virus must use arthropod vectors in order to be transmitted. While the commenter is correct that arthropod vectors for the disease do exist within the United States, both the AHS virus and its vector must be present in an environment for transmission to equines to occur, making the virus difficult to effectively disseminate in equine populations. Therefore, we concluded that the AHS virus will unlikely be used as a bioterrorism agent. Additionally, while the commenter is correct that currently there are no vaccines available in the United States for AHS, and, accordingly, no guidelines yet established for use of AHS vaccines within the United States, vaccines are available internationally and in the event of foreign animal disease outbreak, USDA can implement emergency response plans. USDA's manual for response to an introduction of a foreign animal diseases, such as AHS, is found at *https://www.aphis.usda.gov/sites/default/files/fadprep_manual_1.pdf.*

The difficulty in disseminating and transmitting AHS virus and the availability of vaccines played a significant role in the Agricultural Interagency Select Agents and Toxins Technical Advisory Committee, or Ag-ISATTAC's, recommendation to delist AHS virus as a select agent.

Based on the foregoing considerations, we are delisting AHS virus as a select agent, as proposed.

Brucella Species

We received 44 comments supporting delisting of all three species of *Brucella* (*B. abortus, B. suis,* and *B. melitensis*). These commenters supported delisting for one or more of the following reasons:

- State animal health officials, researchers, and industry stakeholder groups stated that these species are unlikely to be intentionally used as an agent of bioterrorism. They commented that *Brucella* has a limited to negligible rate as a bioterrorism weapon and the benefits (*e.g.,* research, testing, etc.) outweigh the risks. Also, they stated that these organisms are effectively contained within appropriate biosafety and biosecurity facilities, limiting access to unauthorized individuals.
- Private citizens and animal health groups stated that existing regulatory burden prevents ongoing research into vaccine development specifically in the areas of vaccine efficacy and vaccine delivery in wildlife. We agree regarding the burden to the research community, and that more robust studies can help limit the spread of disease.
- Private citizens commented that brucellosis in humans is rarely fatal and easily treatable in the early stages.
- Stakeholders and private citizens, also, said intervention strategies to reduce the disease in animal populations exist: There are already nationally recognized biosafety measures used by U.S. researchers in handling these agents. For instance, there are effective and well-established antibiotic treatment regimens for brucellosis due to infections with *B. abortus, B. melitensis,* or *B. suis.*

We received an additional 11 comments that only addressed *B. abortus* and supported delisting it. In addition to the above considerations, these commenters supported delisting *B. abortus* to facilitate research and development of more effective vaccines for wildlife reservoirs of the agent.

We received two comments opposing delisting of one or more of the *Brucella* spp. One commenter opposed delisting *Brucella* spp. pending vaccine development, citing an incident where the commenter claimed more than 300 veterinary medical professionals in a foreign country were exposed to *B. abortus* while vaccinating cattle, with multiple mortalities.

While human health considerations generally fall outside of APHIS' administration of the Act, and are instead under the purview of CDC, because the commenter raised concerns related to transmissibility due to human interaction with livestock, we wish to provide context for the incident cited by the commenter and respond to the stated concerns.

The above-cited incident did not occur in the United States. While misuse of vaccines, and improper vaccination protocols have, on rare occasion, resulted in transmission of the

vaccine strain of *B. abortus* to humans domestically, antibiotics are widely available within the United States to treat incidents of brucellosis in humans, and mortality is rare. The Act also directs us to consider not only the availability of prophylaxis, such as vaccines, but also pharmacotherapies, such as antibiotics. For these reasons, we disagree with the commenter that *B. abortus* should not be delisted pending vaccine development. The commenter also did not contest our reasons in the proposed rule for delisting *B. abortus:* The agent is unlikely to be used as an agent of bioterrorism for a large-scale population introduction due to the high concentration of the agent necessary to produce disease as well as modern cattle production processes that limit animal-to-animal transmission routes; there is an efficacious vaccine; there is moderate immunity status within vulnerable populations; there is limited farm-to-farm transmission risk; and there are effective quarantine procedures. In this regard, we note that several of the commenters who supported delisting *B. abortus* provided scientific research or articles that buttressed these considerations.

Another commenter claimed, without evidence, that *B. abortus* was not a real disease, and being used as a pretext to kill bison.

The commenter is incorrect. *B. abortus* is a documented disease of cattle and bison.

Multiple commenters supportive of delisting *Brucella* spp. stated that *B. abortus* is a serious human health risk, and supported delisting insofar as it would, among other things, facilitate vaccine development in cattle and bison that could reduce rancher exposure to the disease.

As we noted above, human health considerations generally fall outside of APHIS' administration of the Act. However, we disagree with the commenters' characterization of the human health risk presented by brucellosis. While it can be fatal, the case fatality rate and person-to-person transmission for *B. abortus* continues to be very low. In addition, the human illnesses caused by *B. abortus* are readily recognized and can be treated with widely available antibiotics.

One commenter requested clarification that the diseases would still be reportable, even if delisted as select agents, and that the domestic brucellosis eradication program would still remain.

Brucellosis is a livestock disease that is reportable to State and Federal animal health authorities in the United States when an outbreak occurs. Our domestic brucellosis eradication program is administered by APHIS and State animal health authorities under a different statute, the Animal Health Protection Act (7 U.S.C. 8301–8317), and will remain in effect.[3]

One commenter stated that it was the commenter's understanding that CDC biosafety level 3 (BSL 3) requirements will still be in effect for *Brucella* spp. even if all three agents are delisted.

Delisting of an agent neither reduces nor affects the recommended biosafety level for laboratory work. BSL 3 laboratory safety and containment is currently recommended for laboratory work with *Brucella* spp. The current BSL 3 laboratory safety and containment recommendations for *Brucella* spp. are outlined in the Biosafety in Microbiological and Biomedical Laboratories (BMBL), available at: *https://www.cdc.gov/labs/bmbl/index.html.*

Finally, several commenters stated that research facilities registered with FSAP and currently conducting ongoing research on *Brucella* spp. will need guidance regarding the impacts of delisting on their work. FSAP will provide such guidance.

Accordingly, we are delisting *B. abortus, B. melitensis,* and *B. suis* as select agents, as proposed.

CDC Agents

Finally, we received a few comments on CDC's list of select agents and toxins. These comments are outside of the scope of this rulemaking, and APHIS has routed them to CDC for consideration.

Nipah Virus

In its January 30, 2024, proposed rule (89 FR 5823–1), CDC proposed designating Nipah virus, an overlap select agent, as a Tier 1 select agent because of its human transmissibility, high case fatality rate, high severity of illness, and severe long-term effects. However, due to an inadvertent oversight in our proposed rule, APHIS did not propose parallel changes. In its final rule published elsewhere in this issue of the **Federal Register**, CDC is designating Nipah virus as a Tier 1 select agent as proposed based on consideration of the comments received. As a result of CDC's decision, because Nipah virus is an overlap select agent, in this final rule, we are amending 9 CFR 121.3(b) to add an asterisk before ''Nipah virus,'' thus indicating its designation as a Tier 1 select agent. We are doing this to ensure harmonization between our regulations and CDC's regulations regarding this designation.

Therefore, for the reasons given, we are adopting the proposed revisions to the lists of select agents and toxin set forth in 7 CFR 331.3(b) and 9 CFR 121.3(b) and (b) that arose out of the biennial review of the list as final, with the change discussed immediately above. Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866 as amended by Executive Order 14094, ''Modernizing Regulatory Review,'' and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this final rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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 economic analysis also examines the potential economic effects of this rulemaking on small entities, as required by the Regulatory Flexibility Act.

Summary

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188), as amended (referred to below as the Bioterrorism Response Act), provides for the regulation of certain biological agents and toxins that have the potential to pose a severe threat to human, animal, or plant health, or to animal or plant products. APHIS, Emergency & Regulatory Compliance Services (ERCS), and the Division of Agricultural Select Agents and Toxins (DASAT) have the primary responsibility for implementing the provisions of the Bioterrorism Response Act with the USDA. Within APHIS, VS select agents and toxins, listed in 9 CFR 121.3, are those that have been determined to have the potential to pose a severe threat to animal health or animal products, and PPQ select agents and toxins, listed in 7 CFR 331.3, are those that have been determined to have the potential to pose a severe threat to plant health or plant products. Overlap select agents and toxins, listed in 9 CFR 121.4, are those

[3] 9 CFR part 78 (Brucellosis; Domestic Brucellosis Regulations).

that have been determined to pose a severe threat to public health and safety, to animal health, or to animal products. Overlap select agents and toxins are subject to regulation by both APHIS, ERCS, DASAT, and the CDC's Division of Regulatory Science and Compliance (DRSC), which has the primary responsibility for implementing the provisions of the Bioterrorism Response Act for the U.S. Department of Health and Human Services (HHS). Together, APHIS, ERCS, DASAT, and CDC's DRSC comprise the Federal Select Agent Program (FSAP).

Title II, Subtitle B of the Bioterrorism Response Act (which is cited as the ''Agricultural Bioterrorism Protection Act of 2002,'' as amended, and referred to below as the Act), section 212(a)(1) (7 U.S.C. 8401(a)(1)), provides, in part, that the Secretary of Agriculture (the Secretary) must establish and maintain, by regulation, a list of each biological agent and each toxin that the Secretary determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. Paragraph (a)(2) of section 212 of the Act (7 U.S.C. 8401(a)(2)) requires the Secretary to review and republish the list of select agents and toxins every two years and to otherwise revise the list as necessary. To fulfill this statutory mandate, APHIS convenes separate interagency working groups to review the list of PPQ and VS select agents and toxins, as well as any overlap select agents and toxins, and develop recommendations regarding possible changes to the list using the five criteria for listing found in the Act. APHIS and CDC coordinate on the biennial review for overlap select agents and toxins that have been determined to pose a severe threat to human and animal health or animal products.

APHIS is delisting three overlap select agents: *Brucella abortus, Brucella suis,* and *Brucella melitensis.* CDC has made parallel regulatory changes with respect to these *Brucella* spp. APHIS is also delisting one PPQ select agent, *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*), and one VS select agent, African horse sickness (AHS) virus. These delisting changes will economically benefit producers, research and reference laboratories, and State and Federal oversight agencies, while also maintaining adequate program oversight of delisted select agents and toxins through HHS CDC and National Institutes of Health guidelines along with USDA–APHIS permits for movement.

Previous regulatory restrictions had effectively prohibited vaccine trials using natural transmission models, limited the opportunity for large animal studies, inhibited available surveillance, and prohibited studies that would evaluate vaccine or diagnostic product efficacy through comingling vaccinated and naturally infected animals. Delisting these five agents could decrease disease management costs for State and Federal governments as well as livestock producers. Additionally, delisting will remove restrictions that limited courier availability for these five agents, a factor that previously resulted in prohibitive shipment costs for many laboratories. Previous shipment costs had inhibited isolate sharing between reference and research laboratories, thus leading to decreased advancements from researchers and laboratories involved in diagnostic improvements and disease eradication efforts. Delisting the three *Brucella* agents (*B. abortus, B. suis,* and *B. melitensis*) as overlap select agents and one VS agent, AHS virus, along with one plant agent, *Peronosclerospora philippinensis,* from the list of select agents and toxins will economically benefit producers, research and reference laboratories, and State and Federal oversight agencies.

B. abortus presents little economic or animal health risk as a bioterrorism agent as it is unlikely to result in large-scale population introduction due to the high concentration of the agent necessary to produce disease as well as modern cattle production processes that limit animal-to-animal transmission routes. There is an efficacious vaccine, moderate immunity status within vulnerable populations, limited farm-to-farm transmission risk, and effective quarantine procedures. (Center for Food Security and Public Health, 2009; Moreno, E., 2014; Olsen, S.C., 2011.) *B. melitensis* primarily affects goats and sheep and is of lesser concern because the low farm-to-farm transmission risk due to modern production practices limits the chance of introduction on a scale large enough to impact domestic production. (The Center for Food Security and Public Health, 2009; Moreno, E., 2014; Olsen, S.C., 2011.) *B. suis* also presents a low to moderate animal health risk due to limited farm-to-farm transmission risk because of modern production practices, which reduce the risk of a large-scale introduction. (The Center for Food Security and Public Health, 2009; Stoffregen, W.C., 2006; World Organizsation for Animal Health (OIE), 2017; Zhu, L., et al., 2016.) For these reasons and due to the overwhelming public support, APHIS, in conjunction with CDC, is delisting these three *Brucella* species.

Peronosclerospora philippinensis (*Peronosclerospora sacchari*) is only able to survive and reproduce in the host plant and requires specific environmental conditions to become infectious, for which mitigations exist. The production characteristics for large volume production and subsequent dissemination require extensive specialization and reflect high degree of difficulty for dissemination of the agent. Thus, the economic impact of possible misuse of this agent was deemed a low impact. We are delisting the agent based upon affirmative responses to proposed delisting.

AHS virus causes a life-threatening, hemorrhagic, noncontagious, nonzoonotic, arthropod-borne viral disease of equines. However, the Act's aim is not solely to determine whether a pathogen causes deadly disease, but whether it is likely to be used as a bioterrorism agent, and if used, what the potential impacts would be. In that regard, in deciding whether an agent or toxin should be included on the select agent and toxin list, the Act requires us to take into consideration not only the pathogenicity of the agent, but also the methods by which it is disseminated, and the availability and effectiveness of prophylaxis as well as treatments, such as vaccines and pharmaceuticals. AHS is an arthropod-borne illness that must be vectored to be transmitted. Because both the disease and its vector must be present in an environment for transmission to equines to occur, we considered AHS unlikely to be used as an agent of bioterrorism. Vaccines are also available internationally and in the event of foreign animal disease outbreak, we can implement emergency response plans. Based on the foregoing considerations, we are delisting AHS virus as a select agent.

Currently, there are 236 entities registered with APHIS and CDC. Of these entities, 13 are private entities, 30 are Federal entities, 42 are commercial entities, 84 are academic entities, and 67 are State entities. Less than 32 percent of all firms operating within these North American Industry Classification (NAICS) categories are considered to be small entities.

This document provides a cost-benefit analysis, as required by Executive Orders 12866, 13563, and 14094 which direct Federal 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, and equity). Executive Order 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This document also examines the potential economic effects of this rulemaking on small entities, as required by the Regulatory Flexibility Act.

Description of Final Rule

Pursuant to the Agricultural Bioterrorism Protection Act of 2002, as amended (7 U.S.C. 8401(a)(2)) (Act), APHIS has completed its required biennial review of the current list of select agents and toxins in 7 CFR 331.3 (PPQ select agents) and 9 CFR 121.3 (VS select agents) and 121.4 (overlap select agents overseen jointly with CDC). This final rule implements the recommendations of the interagency working groups with respect to the list of select agents and toxins. APHIS, in conjunction with CDC, is removing the following overlap select agents from the list of select agents and toxins: *Brucella abortus, Brucella suis,* and *Brucella melitensis.* Public response showed overwhelming support for delisting all three *Brucella* species. Therefore, we consider it appropriate to delist these three *Brucella* spp.

We are also delisting *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*). We received only supportive comments for this proposed delisting.

Finally, we are delisting AHS virus. While we received a comment opposed to this delisting, it did not call into question our considerations in proposing delisting.

Overview of the Action and Affected Entities

As previously discussed, there are 236 entities registered with APHIS and CDC. Of these entities,13 are private entities, 30 are Federal entities, 42 are commercial entities, 84 are academic entities, and 67 are State entities. Of these, less than 32 percent of all entities within these NAICS categories are considered to be small entities. The delisting of *B. abortus, B. suis,* and *B. melitensis* is anticipated to economically benefit producers, research and reference laboratories, and State and Federal oversight agencies, while also maintaining adequate program oversight of delisted select agents and toxins through HHS CDC and National Institutes of Health guidelines along with USDA–APHIS permits for movement. Below we provide a cost-benefit analysis, as required by Executive Orders 12866, 13563, and 14094 to examine the potential economic effects of delisting *B. abortus, B. suis, B. melitensis, Peronosclerospora philippinensis* (*Peronosclerospora sacchari*), and AHS virus on small entities.

Expected Costs and Benefits of the Final Rule

There are currently costs associated with registration of the select agents that we are delisting. There are no direct costs for regulated entities associated with the delisting of *Brucella species,* only benefits to facilities to participate in *Brucella* research. If *Brucella* species are delisted, APHIS regulations requiring permits for their movement pursuant to 9 CFR part 122 will be operative, however; new permits cost $150 and permitting information is found here: *https://www.aphis.usda.gov/animal-product-import/organisms-vectors.* Many entities have been requesting the delisting of the *Brucella* spp. for years. State Veterinarians have expressed concern regarding the limitation on brucellosis research because of the designation of *Brucella* as a select agent.[4]

Livestock producer organizations and the United States Animal Health Association have voiced their support and the need for the development of a *B. suis* vaccine, as well as improved diagnostics for *Brucella* spp.[5] Similarly, *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*) has received public support for delisting as the agent is only able to survive and reproduce in the host plant, and AHS, while a life-threatening viral disease of equines, is unlikely to be used as a bioterrorism agent. Previous regulatory restrictions had effectively prohibited vaccine trials using natural transmission models, limited the opportunity for large animal studies, inhibited available surveillance, and prohibited studies that would evaluate vaccine or diagnostic product efficacy through comingling vaccinated and naturally infected animals. These limitations increase disease management costs for State and Federal governments as well as livestock producers.

One previous example of the public requesting delisting of a select agent for research purposes was Valley Fever or *Coccidiodes spp.* Until October 2012, Valley Fever or *Coccidiodes* spp. had been listed as a select agent by both APHIS and CDC. Since delisting, additional research has taken place, resulting in enhanced outreach to inform potential infected citizens. Doctors and medical personnel also are more familiar with it and understand that climate change is contributing to this disease in California. Like Valley Fever, the high cost to work with *Brucella* spp. has prevented appropriate research and field studies to take place, thus hampering new information and research to limit or stop the spread of the disease or at least inform the public of its method of infection. Very few laboratories currently have the resources or ability to do *Brucella* spp. research due to the facility needs required by its current listing as a select agent under the regulations.

Due to the stringent transfer requirements in 9 CFR 121.16 for select agents, currently, there is limited courier availability for *Brucella* spp., *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*), and AHS virus shipments. The lack of available couriers has resulted in prohibitive shipment costs for many laboratories. The increased shipment costs have inhibited isolate sharing between reference and research laboratories, thus leading to decreased advancements from researchers and laboratories involved in diagnostic improvements and disease eradication efforts. Removing the three *Brucella species* (*B. abortus, B. suis,* and *B. melitensis*) as overlap select agents and one VS agent, AHS virus, along with one plant agent, *Peronosclerospora philippinensis,* from the list of select agents and toxins will thus economically benefit producers, research and reference laboratories, and, for *Brucella abortus* delisting, State and Federal oversight agencies.

As described, any impacts of delisting these agents from the list of select agents and toxins are expected to be beneficial for the affected industries.

Small-Entity Prevalence

Entities that possess, use, or transfer *B. abortus, B. suis,* and *B. melitensis* along with *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*) and AHS virus would either benefit or be unaffected by this final rule. Potentially affected entities include laboratories, other research institutions, and related entities in possession of the *Brucella* spp. Affected entities (other than Federal and State governmental entities) are likely found within the following NAICS categories:

- 541714, Research and Development in Biotechnology;

[4] State Veterinarian Notes, March 2020: Limitations on brucellosis research due to being listed as a select agent. (*https://liv.mt.gov/_docs/Animal-Health/Newsletters/1st%20%20Quarter%20Newsletter%20Vol%2013%20Iss%201%20C%20Final.pdf*).

[5] United States Animal Health Association (USAHA) Committee on Cattle and Bison, 2020, page 8: AgSAS Delisting Update: *https://www.usaha.org/upload/Committee/2020Reports/Cattle_Bison_Report_2020.pdf.*

• 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology);
• 325412, Pharmaceutical Preparation Manufacturing;
• 325413, In-Vitro Diagnostic Substance Manufacturing;
• 325414, Biological Product (except Diagnostic) Manufacturing;
• 541940, Veterinary Services;
• 611310, Colleges, Universities and Professional Schools;
• 621511, Medical Laboratories;
• 622110, General Medical and Surgical Hospitals.

The Small Business Administration (SBA) has established small-entity size standards based on the NAICS categories. An entity classified within NAICS 541714 and NAICS 541715 is considered small with 1,000 or fewer employees, and one within NAICS, 325413, and 325414 is considered small with 1,250 or fewer employees and one with NAICS 325124 is considered small with 1,300 or fewer employees. An entity within NAICS 541940 is considered small with annual receipts of $10 million or less, and an entity within NAICS 611310 is considered small with annual receipts of not more than $34.5 million. Entities classified within NAICS 621511 are considered to be small if they have annual receipts of not more than $41.5 million. An entity classified within NAICS 622110 is considered to be small with annual receipts of not more than $47 million.

Potential Impact on Small Entities

As described above, entities that possess, use, or transfer the delisted agents are not expected to be significantly affected by this final rule and will benefit from the enhanced ability to further perform research on the relevant agent.

Currently, there are 236 entities registered with APHIS and CDC. Of these entities, 13 are private entities, 30 are Federal entities, 42 are commercial entities, 84 are academic entities, and 67 are State entities. Approximately 32 percent of all entities within these NAICS categories of laboratories are considered to be small entities and 68 percent are considered large entities.

Of these 236 registered entities, potentially affected entities include laboratories, other research institutions, and related entities in possession of select agents. Potentially affected entities (other than Federal and State governmental entities) are likely found within the following NAICS categories:
• 541714, Research and Development in Biotechnology;
• 541715, Research and Development in the Physical, Engineering, and Life Sciences (except Biotechnology);
• 325412, Pharmaceutical Preparation Manufacturing;
• 325413, In-Vitro Diagnostic Substance Manufacturing;
• 325414, Biological Product (except Diagnostic) Manufacturing;
• 541940, Veterinary Services;
• 611310, Colleges, Universities and Professional Schools;
• 621511, Medical Laboratories; or
• 622110, General Medical and Surgical Hospitals.

The SBA has established small-entity size standards based on the NAICS categories. An entity classified within NAICS 541714 and NAICS 541715 is considered small with 1,000 or less employees, and an entity classified within NAICS 325412 is considered small with 1,300 or less employees, 325413, and 325414 is considered small with 1,250 or less employees. An entity in NAICS 541940 is considered small with annual receipts of $10 million or less, and an entity in NAICS 611310 is considered small with annual receipts of not more than $34.5 million. Entities classified within NAICS 621511 are considered to be small if they have annual receipts of not more than $41.5 million. An entity classified within NAICS 622110 is considered to be small with annual receipts of not more than $47 million.

While the breakdown of the size of the entities, as reported by the 2017 Economic Census (updated subset of 2021 County Business Patterns released on July 3, 2024), does not precisely fit the SBA guidelines, the data indicates that the majority (68 percent) of the entities in industries potentially affected by this final rule, other than post-secondary institutions, can be considered large entities. In other words, over 68 percent of all entities included in the above mentioned NAICS codes are large entities meaning only approximately 32 percent of these entities are small entities [6] (see table 1 below). According to the 2017 Economic Census and 2021 subset, the most recent census data available for all entities, 98 percent of entities in NAICS 541714 and 96 percent 541715, 93 percent of entities in NAICS 325412, 86 percent of entities in NAICS 325413, 86 percent of entities in NAICS 325414, 0 percent of entities in NAICS 541940, 13 percent of entities in NAICS 621511, 7 percent of entities in NAICS 611310, and 3 percent of entities in NAICS 622110 can be classified as small entities.[7]

TABLE 1—PREVALENCE OF SMALL/LARGE ENTITIES WITHIN AFFECTED INDUSTRIES

NAICS code	Number of firms in each SBA size class		Percentage of small firms
SBA Small-entity Standard based on Employment	<1,000 Employees small entities.	1,000 + Employees large entities.	
541714 Research and Development (R&D) in Biotechnology (commercial and non-profit) 4,714 firms.	4,638	76	98
541715 R&D in the Life Sciences (commercial and non-profit) 9,824 firms	9,399	425	96
	<1,250 Employees small entities.	1,250 + Employees large entities.	
325413 In-vitro Diagnostic Substance 194 firms	167	27	86
325414 Biological Product (except Diagnostic) 288 firms	247	41	86
	<1,300 Employees	1,300 + Employees large entities.	
325412 Pharmaceutical Preparation 1,172 firms	1,092	80	93
SBA Small-entity Standard based on Annual Receipts	<$10 million in Receipts small firms.	$10 million + in Receipts large firms.	

[6] NAICS codes included for all firms totaled 50,281. Of that total, 16,149 were considered small and 34,132 were considered large. Overall percent was 32 percent small firms and 68 percent large firms.

[7] Based on the small business size standards matched to industries described in NAICS, as modified by the Office of Management and Budget in 2017, and reported in the SBA's Small Business Size regulations contained in 13 CFR part 121 (*https://www.ecfr.gov/current/title-13/chapter-I/part-121*) and data by enterprise receipt size (*https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html*) and also when not available in sub 2021 (*https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html*).

TABLE 1—PREVALENCE OF SMALL/LARGE ENTITIES WITHIN AFFECTED INDUSTRIES—Continued

NAICS code	Number of firms in each SBA size class		Percentage of small firms
541940 Veterinary Services 42 b receipts 28,291 firms	0	28,291	0
SBA Small-entity Standard based on Annual Receipts	<$34.5 million in Receipts small firms.	$34.5 million + in Receipts large firms.	
611310 Colleges, Universities, and Professional Schools 2,433 firms	168	2,265	7
SBA Small-entity Standard based on Annual Receipts	<$41.5 million in Receipts small firms.	$41.5 million + in Receipts large firms.	
621511 Medical Laboratories 3,365 firms	438	2,927	13
SBA Small-entity Standard based on Annual Receipts	<$47 million in Receipts small firms.	$47 million + in Receipts large firms.	
622110 General Medical and Surgical Hospitals 2,560	65	2,495	3

The analysis above shows the potential costs of the final rule to be slight as permits would be required for movement. While an interstate transport permit of organisms and vectors will be required, delisted agents will incur less cost than prior to delisting. Prior to delisting, entities had to pay a few thousand dollars in shipping costs alone to move select agent's interstate, due to heightened security measures to move select agent's interstate. The organism and vector permit will cost $150 to move these delisted agents interstate, which is significantly less than the thousands of dollars required to ship select agents interstate. The benefits of the final rule will accrue to all firms conducting research with *Brucella* spp., *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*), and AHS as most of which (68 percent) included in the above mentioned NAICS codes are large entities, meaning only approximately 32 percent of these firms are small entities. Following delisting, they will have the option to purchase a permit for movement only if they decide the benefits of the permit outweigh the cost of $150 per permit. Receipts are in the millions to billions of dollars for these entities; the cost of the permit will be insignificant based upon receipts shown in the Census of Agriculture data. In addition, this is a significant reduction in the cost of shipping select agents interstate which is in the magnitude of a few thousand dollars to move a single select agent interstate. Finally, these entities as mentioned above have already been incurring these shipping costs for interstate movement of delisted and select agents.

Alternatives to the Final Rule

APHIS convenes separate interagency working groups in order to review the list of PPQ and VS select agents and toxins, as well as any overlap select agents and toxins, and develop recommendations regarding possible changes to the list using the five criteria for listing found in the Act. APHIS and CDC coordinate on the biennial review for overlap select agents and toxins that have been determined to pose a severe threat to human and animal health or animal products. The delisting of the three *Brucella* spp., AHS virus, and *P. philippinensis* (*P. sacchari*) is based on the recommendations of the interagency working groups.

The most significant impact of this final rule is the delisting of *Brucella* spp., AHS virus, and *P. philippinensis* (*P. sacchari*), and APHIS and HHS/CDC has carefully considered the alternative of delisting the agents, which would be retaining the agents on the list and continuing regulating these agents.

Retaining the *Brucella* species on the list has several economic, agricultural, and economic effects with little biosecurity benefit. Most notably, retaining *Brucella* species on the list prevents researchers from progressing advancement of science with regards to study of the agents and development of countermeasures for this agent by subjecting these laboratories to Federal Select Agent regulatory authority.

Continuing regulation of *Brucella melitensis, suis,* and *abortus* has a one-time cost of approximately $29,000 to an entity that wishes to register with FSAP for work with these agents. This cost to the regulated community represents a regulatory burden to entities that wish to advance understanding of the agent and research medical countermeasures.

An alternative to the final rule is to not delist these select agents. Retaining *Brucella* spp., AHS virus, and *P. philippinensis* (*P. sacchari*) would maintain the current status quo; it does not consider that these agents no longer pose a severe threat to public health and safety, does not promote better research and vaccine development, and does not align with USDA's decision to delist these agents. In addition, this option is not consistent with the public comment received to support amending the select agent list.

Maintaining the status quo would mean foregoing continued research on an improved *B. abortus* vaccine and development of a *B. suis* vaccine, as well as improved diagnostics for both agents. Similarly, *Peronosclerospora philippinensis* (*Peronosclerospora sacchari*) has received public support for delisting as the agent is only able to survive and reproduce in the host plant, and AHS, while a life-threatening viral disease of equines, is unlikely to be used as a bioterrorism agent. Previous regulatory restrictions had effectively prohibited vaccine trials using natural transmission models, limited the opportunity for large animal studies, inhibited available surveillance, and prohibited studies that would evaluate vaccine or diagnostic product efficacy through comingling vaccinated and naturally infected animals. These limitations also increase disease management costs for State and Federal governments as well as livestock producers.

After carefully considering the technical input of subject matter experts, both within the Federal Government and from public comments, and recommendations from Federal advisory groups, APHIS and HHS/CDC is finalizing the changes to delist agents.

Reasons Action Is Being Considered

APHIS and CDC are delisting *B. abortus, B. suis,* and *B. melitensis* from the select agents and toxins list to reduce costs and enhance opportunities for research on *B. abortus* vaccine and development of a *B. suis* vaccine, as well as improved diagnostics for both agents. The delisting of *Brucella* spp., AHS virus, and *P. philippinensis* (*P. sacchari*) is also based on the recommendations of interagency working groups. *P. philippinensis* (*P. sacchari*) is only able to survive and reproduce in the host plant and requires specific environmental conditions to become infectious, for which mitigations exist. Thus, the economic impact of possible misuse of this agent was deemed a low impact. We are delisting this agent based upon affirmative responses to proposed delisting. With regard to AHS, because both the disease and its vector must be present in an environment for transmission to equines to occur, we considered AHS unlikely to be used as an agent of bioterrorism. Vaccines are available internationally and in the event of foreign animal disease outbreak, we can implement emergency response plans. Based on the foregoing considerations, we are delisting AHS virus as a select agent.

Objectives of and Legal Basis for the Final Rule

Pursuant to the Agricultural Bioterrorism Protection Act of 2002, as amended (7 U.S.C. 8401(a)(2)), APHIS has completed its required biennial review of the current list of select agents and toxins in 7 CFR 331.3 (PPQ select agents) and 9 CFR 121.3 (VS select agents) and 121.4 (overlap select agents overseen jointly with CDC). This final rule will implement the recommendations of the interagency working groups with respect to the list of select agents and toxins. APHIS, in conjunction with CDC, is removing the following overlap select agents: *B. abortus, B. suis,* and *B. melitensis.* APHIS is also removing one VS select agent, AHS virus. APHIS is also removing one PPQ select agent, *P. philippinensis* (*P. sacchari*).

Projected Reporting, Recordkeeping, and Other Compliance Requirements

Delisting *Brucella* spp., AHS virus, and *P. philippinensis* (*P. sacchari*) will not result in additional reporting, recordkeeping, or other compliance requirements.

Duplication, Overlap, or Conflict With Existing Rules and Regulations

APHIS has not identified any duplication, overlap, or conflict of the final rule with other Federal rules or regulations.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. What follows is a summary of such coordination to date. APHIS has assessed the impact of this rulemaking on Indian Tribes by soliciting Tribal feedback on its provisions. On April 8, 2022, APHIS sent Tribal nations a letter outlining the provisions of the proposed rule and soliciting their feedback. On May 5, 2022, the Sac and Fox Tribe of the Mississippi in Iowa submitted a response expressing concerns regarding whether possible *Brucella abortus* delisting would materially adversely impact APHIS' domestic quarantine program for the control and eradication of brucellosis in cattle and bison. In response, APHIS clarified that the two issues were distinct, and no adverse operational impacts were anticipated. On June 6, 2022, the Tribe indicated that they have no further comments or concerns. To date, no other Tribes have expressed concerns regarding this rulemaking, nor did Tribes submit comments on the proposed rule during its comment period. Therefore, the Agency has determined that this final rule does not, to our knowledge, have Tribal implications that require formal Tribal consultation under Executive Order 13175.

If a Tribe requests consultation, the Animal and Plant Health Inspection Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule (1) preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 331

Agricultural research, Laboratories, Plant diseases and pests, Reporting and recordkeeping requirements.

9 CFR Part 121

Agricultural research, Animal diseases, Laboratories, Medical research, Reporting and recordkeeping requirements.

Accordingly, we are amending 7 CFR part 331 and 9 CFR part 121 as follows:

Title 7—Agriculture

PART 331—POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

■ 1. The authority citation for part 331 continues to read as follows:

Authority: 7 U.S.C. 8401; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Amend § 331.3 by revising paragraph (b) to read as follows:

§ 331.3 PPQ select agents and toxins.

* * * * *

(b) PPQ select agents and toxins are:

(1) *Coniothyrium glycines,* (formerly *Phoma glycinicola, Pyrenochaeta glycines*);

(2) *Ralstonia solanacearum;*

(3) *Rathayibacter toxicus;*

(4) *Sclerophthora rayssiae;*

(5) *Synchytrium endobioticum;* and

(6) *Xanthomonas oryzae.*

* * * * *

Title 9—Animals and Animal Products

PART 121—POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

■ 3. The authority citation for part 121 continues to read as follows:

Authority: 7 U.S.C. 8401; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Amend § 121.3 by revising paragraph (b) to read as follows:

§ 121.3 VS select agents and toxins.

* * * * *

(b) VS select agents and toxins are:

(1) African swine fever virus;

(2) Avian influenza virus;

(3) Classical swine fever virus;

(4) * Foot-and-mouth disease virus;

(5) Goat pox virus;

(6) Lumpy skin disease virus;

(7) *Mycoplasma capricolum;*

(8) *Mycoplasma mycoides;*

(9) Newcastle disease virus; [1]

(10) Peste des petits ruminants virus;

(11) * Rinderpest virus;

(12) Sheep pox virus; and

(13) Swine vesicular disease virus.

* * * * *

[1] A virulent Newcastle disease virus (avian paramyxovirus type 1) has an intracerebral pathogenicity index in day-old chicks (Gallus gallus) of 0.7 or greater, or has an amino acid sequence at the fusion (F) protein cleavage that is consistent with virulent strains of Newcastle disease virus and phenylalanine at residue 117 of the F1 protein N-terminus, except for genotype VI viruses from columbid birds.

■ 5. Amend § 121.4 by revising paragraph (b) to read as follows:

§ 121.4 Overlap select agents and toxins.

* * * * *

(b) Overlap select agents and toxins are:

(1) ** Bacillus anthracis;*

(2) *Bacillus anthracis* (Pasteur strain);

(3) ** Burkholderia mallei;*

(4) ** Burkholderia pseudomallei;*

(5) Hendra virus;

(6) * Nipah virus;

(7) Rift Valley fever virus; and

(8) Venezuelan equine encephalitis virus.

* * * * *

Done in Washington, DC.

Jennifer Moffitt,

Undersecretary, Marketing and Regulatory Programs, USDA.

[FR Doc. 2024–29567 Filed 12–16–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 1008

[DOE–HQ–2024–0085]

RIN 1903–AA18

Privacy Act of 1974: Implementation of Exemptions

AGENCY: U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) is revising its regulations to exempt certain records maintained under a newly established system of records—DOE–85, Research, Technology, and Economic Security Due Diligence Review Records—from the notification and access provisions of the Privacy Act of 1974. The Department is exempting portions of this system of records from these subsections of the Privacy Act because of requirements related to classified information.

DATES: This final rule is effective on January 16, 2025.

FOR FURTHER INFORMATION CONTACT: Kyle David, U.S. Department of Energy, 1000 Independence Avenue SW, Office 8H–085, Washington, DC, 20585; facsimile: (202) 586–8151; email: *kyle.david@hq.doe.gov,* telephone: (240) 686–9485.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
A. Authority
B. Background
II. Discussion
III. Summary of Public Comments
IV. Section 1008.12 Analysis
V. Procedural Issues and Regulatory Review
A. Review Under Executive Orders 12866, 13563, and 14094
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 12988
F. Review Under Executive Order 13132
G. Review Under Executive Order 13175
H. Review Under the Unfunded Mandates Reform Act of 1995
I. Review Under Executive Order 12360
J. Review Under Executive Order 13211
K. Review Under the Treasury and General Government Appropriations Act, 1999
L. Review Under the Treasury and General Government Appropriations Act, 2001
M. Congressional Notification
VI. Approval by the Office of the Secretary of Energy

I. Authority and Background

A. Authority

DOE has broad authority to manage the agency's collection, use, processing, maintenance, storage, and disclosure of Personally Identifiable Information (PII) pursuant to the following authorities: 42 United States Code (U.S.C.) 7101 *et seq.,* 50 U.S.C. 2401 *et seq.,* 5 U.S.C. 1104, 5 U.S.C. 552, 5 U.S.C. 552a, 42 U.S.C. 7254, 5 U.S.C. 301, and 42 U.S.C. 405 note.

B. Background

The Privacy Act of 1974 (the Act) (5 U.S.C. 552a) embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents.

The Privacy Act includes two sets of provisions that allow agencies to claim exemptions from certain requirements in the statute. These provisions allow agencies in certain circumstances to promulgate rules to exempt a system of records from certain provisions of the Privacy Act. For this system of records, pursuant to 5 U.S.C. 552a(k)(1), the Department exempts this system of records from subsections (c)(3); (d); (e)(1), (e)(4)(G), (4)(H), and (4)(I); and (f) of the Privacy Act. This exemption is needed to protect information relating to DOE activities from disclosure to subjects or others related to these activities. Specifically, the exemption is required to safeguard classified information. Pursuant to the Privacy Act and Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,* DOE is issuing this Rule to make clear to the public the reasons why this particular exemption is being applied.

II. Discussion

The Department is exempting portions of a newly established system of records—DOE–85, Research, Technology, and Economic Security Due Diligence Review Records—from subsections (c)(3); (d); (e)(1), (e)(4)(G), (4)(H), and (4)(I); and (f) of the Privacy Act of 1974. To claim this exemption, DOE is amending 10 CFR 1008.12 by adding a new paragraph, (b)(1)(ii)(N). The Department exempts portions of this system of records from these subsections of the Privacy Act because of requirements related to classified information.

The purpose of this system is to enhance DOE's capabilities to aggregate, link, analyze, and maintain information used by the Department to assess research, technology, and economic security (RTES) risk. RTES risks may include risk of foreign government interference and exploitation, intellectual property (IP) loss, national

security risk, conflicts of interest, and conflicts of commitment, and other parameters defined in DOE/National Nuclear Security Administration (NNSA) policy. The RTES analysis builds on pre-existing information provided by individuals and organizations that interact with DOE/NNSA, paired with public records, and in some cases, classified information. Consistent with National Security Presidential Memorandum–33 [1] (NSPM–33), applicable law, and existing DOE/NNSA policies, the system records may be shared as appropriate with other Federal funding agencies and internally within DOE/NNSA to help ensure a coordinated and consistent approach to risk assessment.

For this system of records, the system is exempted from subsections (c)(3); (d); (e)(1), (e)(4)(G), (4)(H), and (4)(I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1). This exemption is needed to protect information relating to DOE activities from disclosure to subjects or others related to these activities. Specifically, the exemption is required to safeguard classified information.

This exemption is a standard national security exemption exercised by many Federal intelligence agencies. Although the RTES Office is not an intelligence agency, the system of records utilized by the RTES Office may include classified information obtained from Federal intelligence sources.

Exemptions for DOE–85 Research, Technology, and Economic Security Due Diligence Review Records from this particular subsection of the Privacy Act are justified on a case-by-case basis to be determined at the time a request is made for the following reasons:

From 5 U.S.C. 552a subsection (k)(1) because providing individuals access to classified information could cause serious damage to the national defense or foreign policy.

On September 10, 2024, DOE published a notice of proposed rulemaking (NOPR) (89 FR 73312). This NOPR claimed the 5 U.S.C. 552a(k)(1) exemption listed in the preceding paragraph. As a result of this NOPR, DOE received one comment, discussed in section III of this document.

III. Summary of Public Comments

As mentioned in previously, DOE received one comment in response to the NOPR (DOE–HQ–2023–0058–0005). The commenter requested a clearer explanation of how conflicts of interest and commitment necessitate exemptions from the Privacy Act and for DOE to consider narrowing the scope of Privacy Act exemptions, particularly the exemption from 5 U.S.C. 552a(e)(1). The commenter points out that the exemption from 5 U.S.C. 522a(e)(1) is too broad and could result in the accumulation of unnecessary information, creating unintended consequences such as the misuse of personal information. Finally, the commenter also stated that Freedom of Information Act (FOIA) liability may also be triggered from people trying to get information they believe is held under exemption.

As to the issue regarding conflicts of interest and commitment, DOE would like to clarify that the justification for exempting the system is based on the extent to which the system contains classified information. This is consistent with 10 CFR 1008.12(b)(1), where 5 U.S.C. 552a(k)(1) applies to the system only ''to the extent [that the system] contain[s] classified information, in order to prevent serious damage to the national defense or foreign policy that could arise from providing individuals access to classified information.'' Determining if something is exempt will be done on a case-by-case basis, and if there is no classified information or national security information, then included information under 5 U.S.C. 552a(k)(1) would not be exempt.

As to the commenters concerns that the exemption from 5 U.S.C. 522a(e)(1) is too broad and could result in collection of irrelevant information, risking misuse of personal information, as well as concerns that the regulation could lead to legal challenges to withholding such information under FOIA, DOE respectfully disagrees. DOE makes clear in the NOPR and restates here, information within the system that meets the criteria of 5 U.S.C. 552a(k)(1) is exempted from disclosure from 5 U.S.C. 552a(e)(1) and the other identified provisions. Information that fails to meet such criteria is not exempted from the provision. Therefore, the exemption from 5 U.S.C. 552a(e)(1) is sufficiently tailored for consistency with 10 CFR 1008.12(b)(1), and determinations will be made on a case-by-case basis.

IV. Section 1008.12 Analysis

This final rule amends 10 CFR 1008.12(b)(1)(ii), by adding paragraph (b)(1)(ii)(N), referencing line item ''(N) Research, Technology, and Economic Security Due Diligence Review Records (DOE–85)'' to paragraph (b)(1)(ii). This addition will demonstrate that SORN DOE–85 is included among the other SORNs taking a 5 U.S.C. 552a (k)(1) exemption under the Privacy Act of 1974. This exemption allows DOE to ''prevent serious damage to the national defense or foreign policy that could arise from providing individuals access to classified information.''

V. Procedural Issues and Regulatory Review

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

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this final rule is consistent with these principles.

Section 6(a) of E.O. 12866 requires agencies to submit ''significant regulatory actions'' to OIRA for review.

[1] National Security Presidential Memorandum on United States Government-Supported Research and Development National Security Policy 33, issued January 14, 2021.

OIRA has determined that this final rule is not a ''significant regulatory action'' within the scope of E.O. 12866. Accordingly, this action is not subject to review under E.O. 12866 by OIRA of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a final rule is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the final rule will not have significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth below.

This final rule will update DOE's policies and procedures concerning the disclosure of records held within a system of records pursuant to the Privacy Act of 1974. This final rule will apply only to activities conducted by DOE's Federal employees and contractors, who would be responsible for implementing the rule requirements. DOE does not expect there to be any potential economic impact of this final rule on small businesses. Small businesses, therefore, should not be adversely impacted by the requirements in this final rule. For these reasons, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act of 1995

This final rule does not impose a collection of information requirement subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE has analyzed this action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion (CX) for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A, paragraph A5. DOE has determined that this final rule is covered under the CX found in DOE's NEPA regulations at paragraph A5 of appendix A to subpart D, 10 CFR part 1021, because it is an amendment to an existing regulation that does not change the environmental effect of the amended regulation and, therefore, meets the requirements for the application of this CX. *See* 10 CFR 1021.410. Therefore, DOE has determined that this final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an Environmental Assessment or an Environmental Impact Statement.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for the affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of the standards. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has tentatively determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''Tribal'' implications and imposes substantial direct compliance costs on Indian Tribal governments. DOE has determined that this final rule will not have such effects and concluded that Executive Order 13175 does not apply to this final rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector.

(Pub. L. 104–4, sec. 201 *et seq.* (codified at 2 U.S.C. 1531 *et seq.*)). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant Federal intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at: *www.energy.gov/gc/guidance-opinions* under ''Guidance & Opinions'' (Rulemaking).) DOE examined this final rule according to UMRA and its statement of policy and has determined that this final rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OIRA, which is part of OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any final rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M–19–15, *Improving Implementation of the Information Quality Act* (April 24, 2019), DOE published updated guidelines which are available at: *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.*

DOE has reviewed this final rule and will ensure that information produced under this regulation remains consistent with the applicable OMB and DOE guidelines.

M. Congressional Review

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 the rule does not, meet the criteria set forth in 5 U.S.C. 804(2).

VI. Approval by the Office of the Secretary of Energy

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

List of Subjects in 10 CFR Part 1008

Administration practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on December 11, 2024, by Ann Dunkin, Senior Agency Official for Privacy, 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 12, 2024.

Treena V. Garrett,

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

For the reasons set forth in the preamble, the Department of Energy amends part 1008 of chapter X of title 10 of the Code of Federal Regulations as set forth below:

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

■ 1. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 5 U.S.C. 552; 5 U.S.C. 552a; 42 U.S.C. 7254; and 5 U.S.C. 301. Section 1008.22(c) also issued under 42 U.S.C. 405 note.

■ 2. Amend § 1008.12 by adding paragraph (b)(1)(ii)(N) to read as follows:

§ 1008.12 Exemptions.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(N) Research, Technology, and Economic Security Due Diligence Review Records (DOE–85).

* * * * *

[FR Doc. 2024–29666 Filed 12–16–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 1008

[DOE–HQ–2024–0084]

RIN 1903–AA16

Privacy Act of 1974: Implementation of Exemptions

AGENCY: U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) is revising its regulations to exempt certain records maintained under a newly established system of records—DOE–42 Nondiscrimination in Federally Assisted Programs Files—from the notification and access provisions of the Privacy Act of 1974. The Department is exempting portions of this system of records from these subsections of the Privacy Act because of requirements related to investigatory material compiled for law enforcement purposes.

DATES: This final rule is effective on January 16, 2025.

FOR FURTHER INFORMATION CONTACT: Kyle David, U.S. Department of Energy, 1000 Independence Avenue SW, Office 8H–085, Washington, DC, 20585; facsimile: (202) 586–8151; email: *kyle.david@hq.doe.gov;* telephone: (240) 686–9485.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority and Background
  A. Authority
  B. Background
II. Discussion
III. Summary of Public Comments
IV. Section 1008.12 Analysis
V. Procedural Issues and Regulatory Review
  A. Review Under Executive Orders 12866, 13563, and 14094
  B. Review Under the Regulatory Flexibility Act
  C. Review Under the Paperwork Reduction Act of 1995
  D. Review Under the National Environmental Policy Act of 1969
  E. Review Under Executive Order 12988
  F. Review Under Executive Order 13132
  G. Review Under Executive Order 13175
  H. Review Under the Unfunded Mandates Reform Act of 1995
  I. Review Under Executive Order 12360
  J. Review Under Executive Order 13211
  K. Review Under the Treasury and General Government Appropriations Act, 1999
  L. Review Under the Treasury and General Government Appropriations Act, 2001
  M. Congressional Review
VI. Approval by the Office of the Secretary of Energy

I. Authority and Background

A. Authority

DOE has broad authority to manage the agency's collection, use, processing, maintenance, storage, and disclosure of Personally Identifiable Information (PII) pursuant to the following authorities: 42 United States Code (U.S.C.) 7101 *et seq.,* 50 U.S.C. 2401 *et seq.,* 5 U.S.C. 1104, 5 U.S.C. 552, 5 U.S.C. 552a, 42 U.S.C. 7254, 5 U.S.C. 301, and 42 U.S.C. 405 note.

B. Background

The Privacy Act of 1974 (the Act) (5 U.S.C. 552a) embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents.

The Privacy Act includes two sets of provisions that allow agencies to claim exemptions from certain requirements in the statute. These provisions allow agencies in certain circumstances to promulgate rules to exempt a system of records from certain provisions of the Privacy Act. For this system of records, pursuant to 5 U.S.C. 552a(k)(2), the Department exempts this system of records from subsections (c)(3); (d); and (e)(1) of the Privacy Act. This exemption is needed to protect from disclosure investigatory material compiled for law enforcement purposes. Pursuant to the Privacy Act and Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,* DOE is issuing this final rule to make clear to the public the reasons why this particular exemption is being applied.

II. Discussion

DOE is claiming an exemption from certain requirements of the Privacy Act for a new system of records: DOE–42 Nondiscrimination in Federally Assisted Programs Files.

The Department is exempting portions of a newly established system of records—DOE–42 Nondiscrimination in Federally Assisted Programs Files—from subsections (c)(3); (d); and (e)(1) of the Privacy Act of 1974. To claim this exemption, DOE is amending 10 CFR 1008.12 by adding a new paragraph, (b)(2)(ii)(R). The Department exempts portions of this system of records from these subsections of the Privacy Act because of requirements related to the compilation of investigatory material for law enforcement purposes.

DOE–42 Nondiscrimination in Federally Assisted Programs Files will provide a central electronic repository to: (i) maintain all records used by OCR–EEO personnel in making Federal civil rights compliance determinations with accuracy, relevance, timeliness, and completeness to assure fairness to the individual(s) in the determination; (ii) create appropriate administrative, technical, and physical safeguards that ensure the security and confidentiality of records and protect against any anticipated threats to their security or integrity and; (iii) create rules of conduct for authorized OCR–EEO personnel involved in the operation, maintenance, and routine uses for this system records.

For this system of records, DOE is claiming the Privacy exemption from requirements in subsections (c)(3); (d); and (e)(1) of the Privacy Act. In addition, the system has been exempted from the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2). These exemptions are needed to protect information relating to DOE activities from disclosure to subjects or others related to these activities. Specifically, these exemptions from the Privacy Act are necessary in order to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DOE's ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

Exemption from these Privacy Act requirements is standard for law enforcement and national security matters and are often exercised by many Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and overall law enforcement process, the applicable exemption of these requirements may be waived on a case-by-case basis.

Exemption from these particular Privacy Act requirements for DOE–42 Nondiscrimination in Federally Assisted Programs Files is justified, on a case-by-case basis to be determined at the time a request is made for the following reasons:

In particular, exemption from the Privacy Act's requirement in subsections (c)(3) (Accounting for Disclosures) is necessary because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DOE as well as the recipient agency. Disclosure of the accounting would, therefore, present a serious impediment to law enforcement efforts or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

Exemption from the Privacy Act's requirement in subsection (d) (Access to Records) is necessary because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DOE or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to nuclear or energy sector security.

Exemption from the Privacy Act's requirements in subsection (e)(1) (Relevancy and Necessity of Information) is necessary because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

On September 20, 2024, DOE published a notice of proposed rulemaking (NOPR) (89 FR 77040), and received one comment, discussed in detail below.

III. Summary of Public Comments

DOE received one public comment in response to its NOPR, and while the commenter was generally supportive of the rule, it raised the following concerns:

1. *Concerns about exemption from subsection (c)(3):* According to the commenter, the exemption from 5 U.S.C. 552a(c)(3) could lead to unauthorized disclosure or misuse of sensitive data, and result in abuse or information leaks. In lieu of this exemption, the commenter recommended the creation of partial exemptions or delayed disclosures.

DOE respectfully disagrees with the commenter regarding the exemption from 5 U.S.C. 552a(c)(3). The record itself is protected from unauthorized disclosure and misuse pursuant to subsection (e)(9) of the Privacy Act, which requires the agency to establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records. Additionally, the Privacy Act governs records about individuals, not about entities that are subject to the Federal civil rights laws that OCR–EEO enforces. Where such information does constitute a record about an individual, this system of records allows the exemption from 5 U.S.C. 552a(c)(3) to be waived on a case-by-case basis in appropriate circumstances where accounting for disclosures would not interfere with or otherwise adversely affect the law enforcement purposes of this system of records or the overall law enforcement process. Finally, this exemption protects against misuses of sensitive data by preventing an accounting for disclosures from being used to alter or destroy evidence, improperly influence or intimidate witnesses, or further other evasive actions that could impede or compromise an investigation. DOE does not agree with the commenter's recommendation to create partial exemptions or delayed disclosures, as this exemption prevents a record subject from using an accounting to retaliate against investigation witnesses or invade the privacy of victims or other persons who engaged in protected activity, including confidential sources who otherwise would be unwilling to come forward or participate in an OCR–EEO investigation.

2. *Concerns about the exemption from subsection (d):* The commenter also asserted that the exemption from 5 U.S.C. 552a(d) raises serious fairness and due process concerns. In lieu of this exemption, the commenter recommended a tiered approach allowing individuals to request access to their records under certain conditions, such as when the information no longer poses a threat to law enforcement, or portions of the record are non-sensitive, or based on the record's relevance to the investigation.

DOE respectfully disagrees with the commenter, and believes this exemption accords with the fairness and due process protections of subsection (k)(2) of the Privacy Act, which expressly provides that any individual who would be denied any right, privilege, or benefit that such person would otherwise be entitled by Federal law, or to which such individual would otherwise be eligible as a result of the maintenance of material within a system of records shall be provided such material, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express or implied promise that the identity of the source would be held in confidence. Additionally, subsection (e)(5) of the Privacy Act requires OCR–EEO to maintain all records used in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

3. *Concerns about the exemption from (e)(1):* The commenter additionally asserted that the exemption from 5 U.S.C. 552a (e)(1) raises concerns that DOE may retain information that is outdated, irrelevant, or unnecessarily harmful to individuals, which the commentor believes may lead to individuals being unfairly scrutinized or targeted based on information that is no longer accurate or relevant to the investigation. In relation to this exemption, the commenter recommended that DOE implement a regular review process based on a well-defined and publicly justifiable review standard, and also implement a central electronic repository to keep this system of records.

For the following reasons, DOE respectfully disagrees with the commenter regarding the exemption from 5 U.S.C. 552a(e)(1). First, it is often impossible to determine the relevance and necessity of information in the early stages of collection, investigation, or adjudication. Second, the DOE regulations implementing Federal civil

rights laws define a federally assisted program or activity to mean all of the operations of any entity, any part of which is a recipient of Federal financial assistance from DOE. Third, information obtained during an OCR–EEO investigation may be relevant and necessary to the civil or criminal law enforcement activities of other Federal agencies, or concern a matter before Congress or a court of competent jurisdiction. Fourth, in furtherance of the administrative, technical, and physical safeguards delineated in the NOPR, the security and privacy controls applicable to this system of records are reviewed on an ongoing basis and updated in accordance with well-defined Federal government standards and DOE directives.

In response to the commenter's conclusion that DOE should provide a more complete description of this system of records, DOE brings the commenter's attention to the ample description provided by the NOPR regarding the administrative, technical, and physical safeguards applicable to this system of records.

IV. Section 1008.12 Analysis

This final rule adds line-item paragraph (b)(2)(ii)(Q), referencing ''Nondiscrimination in Federally Assisted Program Files (DOE–42)''. This addition demonstrates that SORN DOE–42 is included among the other SORNs taking a subsection (k)(2) exemption under the Privacy Act of 1974. Per current regulations located at 10 CFR 1008.12(b)(2)(ii), this exemption allows DOE to ''prevent subjects of investigation from frustrating the investigatory process through access to records about themselves or as a result of learning the identities of confidential informants; to prevent disclosure of investigative techniques; to maintain the ability to obtain necessary information; and thereby to insure the proper functioning and integrity of law enforcement activities.''

V. Procedural Issues and Regulatory Review

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

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (OIRA) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this regulatory action is not a ''significant regulatory action'' within the scope of E.O. 12866. Accordingly, this action is not subject to review under E.O. 12866 by OIRA of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a final rule is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the final rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth below.

This final rule would update DOE's policies and procedures concerning the disclosure of records held within a system of records pursuant to the Privacy Act of 1974. This final rule would apply only to activities conducted by DOE's Federal employees and contractors, who would be responsible for implementing the rule requirements. DOE does not expect there to be any potential economic impact of this final rule on small businesses. Small businesses, therefore, should not be adversely impacted by the requirements in this final rule. For these reasons, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act of 1995

This final rule does not impose a collection of information requirement subject to review and approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (NEPA), DOE has analyzed this action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion (CX) for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE has determined that this final rule is covered under the CX found in DOE's NEPA regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, because it is an amendment to an existing regulation that does not change the environmental effect of the amended regulation and, therefore, meets the

requirements for the application of this CX. *See* 10 CFR 1021.410. Therefore, DOE has determined that this final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and does not require an Environmental Assessment or an Environmental Impact Statement.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for the affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; (6) specifies whether administrative proceedings are to be required before parties may file suit in court and, if so, describes those proceedings and requires the exhaustion of administrative remedies; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of the standards. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and has tentatively determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''Tribal'' implications and imposes substantial direct compliance costs on Indian Tribal governments. DOE has determined that this final rule would not have such effects and concluded that Executive Order 13175 does not apply to this final rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and Tribal governments, and the private sector. (Pub. L. 104–4, sec. 201 *et seq.* (codified at 2 U.S.C. 1531 *et seq.*)). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant Federal intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at: *www.energy.gov/gc/guidance-opinions* under ''Guidance & Opinions'' (Rulemaking)). DOE examined the final rule according to UMRA and its statement of policy and has determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA, which is part of OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1)(i) is a significant regulatory action under Executive Order 12866, or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (2) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any final

rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). Pursuant to OMB Memorandum M–19–15, *Improving Implementation of the Information Quality Act* (April 24, 2019), DOE published updated guidelines which are available at: *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.*

DOE has reviewed this final rule and will ensure that information produced under this regulation remains consistent with the applicable OMB and DOE guidelines.

M. Congressional Review

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 the rule does not, meet the criteria set forth in 5 U.S.C. 804(2).

V. Approval by the Office of the Secretary of Energy

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

List of Subjects in 10 CFR Part 1008

Administration practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on [December 11, 2024, by Ann Dunkin, Senior Agency Official for Privacy, 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 12, 2024.

Treena V. Garrett,

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

For the reasons set forth in the preamble, the Department of Energy amends part 1008 of chapter X of title 10 of the Code of Federal Regulations as set forth below:

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

■ 1. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 5 U.S.C. 552; 5 U.S.C. 552a; 42 U.S.C. 7254; and 5 U.S.C. 301. Section 1008.22(c) also issued under 42 U.S.C. 405 note.

■ 2. Amend § 1008.12 by adding paragraph (b)(2)(ii)(Q) to read as follows:

§ 1008.12 Exemptions.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(Q) Nondiscrimination in Federally Assisted Program Files (DOE–42)

* * * * *

[FR Doc. 2024–29664 Filed 12–16–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2022–1641; Special Conditions No. 33–028–SC]

Special Conditions: BETA Technologies Inc. Model H500A Electric Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for BETA Technologies Inc. (BETA) Model H500A electric engines that operate using electrical technology installed on the aircraft, for use as an aircraft engine. These engines will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards applicable to aircraft engines. This design feature is the use of an electric motor, motor controller, and high-voltage systems as the primary source of propulsion for an aircraft. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective January 16, 2025.

FOR FURTHER INFORMATION CONTACT: Mark Bouyer, Engine and Propulsion Standards Section, AIR–625, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7755; *mark.bouyer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2022, BETA applied for a type certificate for its Model H500A electric engines. The BETA Model H500A electric engine initially will be used as a ''pusher'' electric engine in a single-engine airplane that will be certified separately from the engine. A typical normal category general aviation aircraft locates the engine at the front of the fuselage. In this configuration, the propeller attached to the engine pulls the airplane along its flightpath. A pusher engine is located at the rear of the fuselage, so the propeller attached to the engine pushes the aircraft instead of pulling the aircraft.

The BETA Model H500A electric engine is comprised of a direct drive, radial-flux, permanent-magnet motor, divided in two sections, each section having a three-phase motor, and one electric power inverter controlling each three-phase motor. The magnets are arranged in a Halbach magnet array, and the stator is a concentrated, tooth-wound configuration. A stator is the stationary component in the electric engine that surrounds the rotating hardware; for example: the BETA propeller shaft, which consists of a bonded core with coils of insulated wire, known as the windings. When alternating current is applied to the coils of insulated wire in a stator, a rotating magnetic field is created, which provides the motive force for the rotating components.

Type Certification Basis

Under the provisions of 14 CFR 21.17(a)(1), generally, BETA must show that Model H500A electric engines meet the applicable provisions of 14 CFR part 33 in effect on the date of application for a type certificate.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* part 33) do not contain adequate or appropriate safety standards for the BETA Model H500A electric engines because of a novel or unusual design feature, special conditions may be prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other engine model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other engine model under § 21.101.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The BETA Model H500A electric engines will incorporate the following novel or unusual design features:

An electric motor, motor controller, and high-voltage electrical systems that are used as the primary source of propulsion for an aircraft.

Discussion

Electric propulsion technology is substantially different from the technology used in previously certificated turbine and reciprocating engines. Therefore, these engines introduce new safety concerns that need to be addressed in the certification basis.

BETA's Electric Engines Are Novel or Unusual

The BETA Model H500A electric engines have a novel or unusual design feature, which is the use of electrical sources of energy instead of fuel to drive the mechanical systems that provide propulsion for aircraft. Therefore, part 33 does not contain adequate or appropriate safety standards for the BETA Model H500A electric engine's novel or unusual design feature.

BETA's aircraft engines will operate using electrical power instead of air and fuel combustion to propel the aircraft. These electric engines will be designed, manufactured, and controlled differently than turbine or reciprocating aircraft engines. They will be built with an electric motor, motor controller, and high-voltage electrical systems that draw energy from electrical storage or electrical energy generating systems. The electric motor is a device that converts electrical energy into mechanical energy by electric current flowing through windings (wire coils) in the motor, producing a magnetic field that interacts with permanent magnets mounted on the engine's main rotor. The controller is a system that consists of two main functional elements: the motor controller and an electric power inverter to drive the motor.[1] The high-voltage electrical system is a combination of wires and connectors that integrate the motor and controller.

In addition, the technology comprising these high-voltage and high-current electronic components introduces potential hazards that do not exist in turbine and reciprocating aircraft engines. For example, high-voltage transmission lines, electromagnetic shields, magnetic materials, and high-speed electrical switches are necessary to use the physical properties of an electric engine for propelling an aircraft.

BETA's Electric Engines Require a Mix of Part 33 Standards and Special Conditions

The requirements in part 33 ensure that the design and construction of aircraft engines, including the engine control systems, are proper for the type of aircraft engines considered for certification. However, part 33 does not fully address aircraft engines like the BETA Model H500A, which operates using electrical technology as the primary means of propelling the aircraft.

The requirements in part 33, subpart B, are applicable to reciprocating and turbine aircraft engines. Subparts C and D are applicable to reciprocating aircraft engines. Subparts E through G are applicable to turbine aircraft engines. As such, subparts B through G do not adequately address the use of aircraft engines that operate using electrical technology. Special conditions are needed to ensure a level of safety for electric engines that is commensurate with these subparts, as those regulatory requirements do not contain adequate or appropriate safety standards for electric aircraft engines that are used to propel aircraft.

The FAA proposed special conditions and received comments from many commenters. Some comments resulted in changes to the special conditions. These changes are explained in the Discussion of Comments.

FAA Special Conditions for the BETA Engine Design

Applicability: Special condition no. 1 requires BETA to comply with part 33, except for those airworthiness standards specifically and explicitly applicable only to reciprocating and turbine aircraft engines.

Engine Ratings and Operating Limitations: Special condition no. 2, in addition to compliance with § 33.7(a), requires BETA to establish engine operating limits related to the power, torque, speed, and duty cycles specific to BETA Model H500A electric engines. The duty or duty cycle is a statement of the load(s) to which the engine is subjected, including, if applicable, starting, no-load and rest, and de-energized periods, including their durations or cycles and sequence in time. This special condition also requires BETA to declare cooling fluid grade or specification, power supply requirements, and to establish any additional ratings that are necessary to define the BETA Model H500A electric engine capabilities required for safe operation of the engine.

Materials: Special condition no. 3 requires BETA to comply with § 33.15, which sets requirements for the suitability and durability of materials used in the engine, and which would otherwise be applicable only to reciprocating and turbine aircraft engines.

Fire Protection: Special condition no. 4 requires BETA to comply with § 33.17, which sets requirements to protect the engine and certain parts and components of the airplane against fire, and which would otherwise be applicable only to reciprocating and turbine aircraft engines. Additionally, this special condition requires BETA to ensure that the high-voltage electrical wiring interconnect systems that connect the controller to the motor are protected against arc faults. An arc fault is a high-power discharge of electricity between two or more conductors. This discharge generates heat, which can break down the wire's insulation and trigger an electrical fire. Arc faults can range in power from a few amps up to thousands of amps and are highly variable in strength and duration.

Durability: Special condition no. 5 requires the design and construction of BETA Model H500A electric engines to minimize the development of an unsafe condition between maintenance intervals, overhaul periods, and mandatory actions described in the

[1] Sometimes the entire system is referred to as an inverter. Throughout this document, it is referred to as the controller.

Instructions for Continued Airworthiness (ICA).

Engine Cooling: Special condition no. 6 requires BETA to comply with § 33.21, which requires the engine design and construction to provide necessary cooling, and which would otherwise be applicable only to reciprocating and turbine aircraft engines. Additionally, this special condition requires BETA to document the cooling system monitoring features and usage in the engine installation manual (see § 33.5) if cooling is required to satisfy the safety analysis described in special condition no. 17. Loss of cooling to an aircraft engine that operates using electrical technology can result in rapid overheating and abrupt engine failure, with critical consequences to safety.

Engine Mounting Attachments and Structure: Special condition no. 7 requires BETA and the design to comply with § 33.23, which requires the applicant to define, and the design to withstand, certain load limits for the engine mounting attachments and related engine structure. These requirements would otherwise be applicable only to reciprocating and turbine aircraft engines.

Accessory Attachments: Special condition no. 8 requires the design to comply with § 33.25, which sets certain design, operational, and maintenance requirements for the engine's accessory drive and mounting attachments, and which would otherwise be applicable only to reciprocating and turbine aircraft engines.

Rotor Overspeed: Special condition no. 9 requires BETA to establish by test, validated analysis, or a combination of both, that—

(1) the rotor overspeed must not result in a burst, rotor growth, or damage that results in a hazardous engine effect;

(2) rotors must possess sufficient strength margin to prevent burst; and

(3) operating limits must not be exceeded in service.

The special condition associated with rotor overspeed is necessary because of the differences between turbine engine technology and the technology of these electric engines. Turbine rotor speed is driven by expanding gas and aerodynamic loads on rotor blades. Therefore, the rotor speed or overspeed results from interactions between thermodynamic and aerodynamic engine properties. The speed of an electric engine is directly controlled by electric current, and an electromagnetic field created by the controller. Consequently, electric engine rotor response to power demand and overspeed-protection systems is quicker and more precise. Also, the failure modes that can lead to overspeed between turbine engines and electric engines are vastly different, and therefore this special condition is necessary.

Engine Control Systems: Special condition no. 10(b) requires BETA to ensure that these engines do not experience any unacceptable operating characteristics, such as unstable speed or torque control, or exceed any of their operating limitations.

The FAA originally issued § 33.28 at amendment 33–15 to address the evolution of the means of controlling the fuel supplied to the engine, from carburetors and hydro-mechanical controls to electronic control systems. These electronic control systems grew in complexity over the years, and as a result, the FAA amended § 33.28 at amendment 33–26 to address these increasing complexities. The controller that forms the controlling system for these electric engines is significantly simpler than the complex control systems used in modern turbine engines. The current regulations for engine control are inappropriate for electric engine control systems; therefore, special condition no. 10(b) associated with controlling these engines is necessary.

Special condition no. 10(c) requires BETA to develop and verify the software and complex electronic hardware used in programmable logic devices, using proven methods that ensure that the devices can provide the accuracy, precision, functionality, and reliability commensurate with the hazard that is being mitigated by the logic. RTCA DO–254, ''Design Assurance Guidance for Airborne Electronic Hardware,'' dated April 19, 2000,[2] distinguishes between complex and simple electronic hardware.

Special condition no. 10(d) requires data from assessments of all functional aspects of the control system to prevent errors that could exist in software programs that are not readily observable by inspection of the code. Also, BETA must use methods that will result in the expected quality that ensures the engine control system performs the intended functions throughout the declared operational envelope.

The environmental limits referred to in special condition no. 10(e) include temperature, vibration, high-intensity radiated fields (HIRF), and all others addressed in RTCA DO–160G, ''Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments,'' dated December 8, 2010, which includes RTCA DO–160G, Change 1—''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated December, 16, 2014, and DO–357, ''User Guide: Supplement to DO–160G,'' dated December 16, 2014.[3] Special condition 10(e) requires BETA to demonstrate by system or component tests in special condition no. 27 any environmental limits that cannot be adequately substantiated by the endurance demonstration, validated analysis, or a combination thereof.

Special condition no. 10(f) requires BETA to evaluate various control system failures to ensure that such failures will not lead to unsafe engine conditions. The FAA issued Advisory Circular (AC) 33.28–3, ''Guidance Material for 14 CFR 33.28, Engine Control Systems,'' on May 23, 2014 (AC 33.28–3), for reciprocating and turbine engines.[4] This AC provides guidance for defining an engine control system failure when showing compliance with the requirements of § 33.28. AC 33.28–3 also includes objectives for control system integrity requirements, criteria for a loss of thrust control (LOTC) and loss of power control (LOPC) event, and an acceptable LOTC/LOPC rate. The electrical and electronic failures and failure rates did not account for electric engines when the FAA issued this AC, and therefore performance-based special conditions are established to allow fault accommodation criteria to be developed for electric engines.

The phrase ''in the full-up configuration'' used in special condition no. 10(f)(2) refers to a system without any fault conditions present. The electronic control system must, when in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events.

The term ''local'' in the context of ''local events'' used in special condition no. 10(f)(4) means failures or malfunctions leading to events in the intended aircraft installation such as fire, overheat, or failures leading to damage to engine control system components. These ''local events'' must not result in a hazardous engine effect due to engine control system failures or malfunctions.

Special condition no. 10(g) requires BETA to conduct a safety assessment of the control system to support the safety analysis in special condition no. 17. This control system safety assessment

[2] *https://standards.rtca.org/XanHrK.*

[3] *https://my.rtca.org/NC__Product?id=a1B36000001IcnSEAS.*

[4] *https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_33_28-3.pdf.*

provides engine response to failures, and rates of these failures that can be used at the aircraft-level safety assessment.

Special condition no. 10(h) requires BETA to provide appropriate protection devices or systems to ensure that engine operating limits will not be exceeded in service.

Special condition no. 10(i) is necessary to ensure that the controllers are self-sufficient and isolated from other aircraft systems. The aircraft-supplied data supports the analysis at the aircraft level to protect the aircraft from common mode failures that could lead to major propulsion power loss. The exception ''other than power command signals from the aircraft,'' noted in special condition no. 10(i), is based on the FAA's determination that the engine controller has no reasonable means to determine the validity of any in-range signals from the electrical power system. In many cases, the engine control system can detect a faulty signal from the aircraft, but the engine control system typically accepts the power command signal as a valid value.

The term ''independent'' in the context of ''fully independent engine systems'' referenced in special condition no. 10(i) means the controllers should be self-sufficient and isolated from other aircraft systems or provide redundancy that enables the engine control system to accommodate aircraft data system failures. In the case of loss, interruption, or corruption of aircraft-supplied data, the engine must continue to function in a safe and acceptable manner without hazardous engine effects.

The term ''accommodated,'' in the context of ''detected and accommodated,'' referenced in special condition 10(i)(2) is to assure that, upon detecting a fault, the system continues to function safely.

Special condition no. 10(j) requires BETA to show that the loss of electric power from the aircraft will not cause the electric engine to malfunction in a manner hazardous to the aircraft. The total loss of electric power to the electric engine may result in an engine shutdown.

Instrument Connection: Special condition no. 11 requires BETA to comply with § 33.29(a), (e), and (g), which set certain requirements for the connection and installation of instruments to monitor engine performance. The remaining requirements in § 33.29 apply only to technologies used in reciprocating and turbine aircraft engines.

Instrument connections (wires, wire insulation, potting, grounding, connector designs, etc.) must not introduce unsafe features or characteristics to the aircraft. Special condition no. 11 requires the safety analysis to include potential hazardous effects from failures of instrument connections to function properly. The outcome of this analysis might identify the need for design enhancements or additional ICA to ensure safety.

Stress Analysis: Section 33.62 requires applicants to perform a stress analysis on each turbine engine. This regulation is explicitly applicable only to turbine engines and turbine engine components, and it is not appropriate for the BETA Model H500A electric engines. However, a stress analysis particular to these electric engines is necessary to account for stresses resulting from electric technology used in the engine.

Special condition no. 12 requires a mechanical, thermal, and electrical stress analysis to show that the engine has a sufficient design margin to prevent unacceptable operating characteristics. Also, the applicant must determine the maximum stresses in the engine by tests, validated analysis, or a combination thereof, and show that they do not exceed minimum material properties.

Critical and Life-Limited Parts: Special condition no. 13 requires BETA to show whether rotating or moving components, bearings, shafts, static parts, and non-redundant mount components should be classified, designed, manufactured, and managed throughout their service life as critical or life-limited parts.

The term ''low-cycle fatigue,'' referenced in special condition no. 13(a)(2), is a decline in material strength from exposure to cyclic stress at levels beyond the stress threshold the material can sustain indefinitely. This threshold is known as the ''material endurance limit.'' Low-cycle fatigue typically causes a part to sustain plastic or permanent deformation during the cyclic loading and can lead to cracks, crack growth, and fracture. Engine parts that operate at high temperatures and high mechanical stresses simultaneously can experience low-cycle fatigue coupled with creep. Creep is the tendency of a metallic material to permanently move or deform when it is exposed to the extreme thermal conditions created by hot combustion gasses, and substantial physical loads such as high rotational speeds and maximum thrust. Conversely, high-cycle fatigue is caused by elastic deformation, small strains caused by alternating stress, and a much higher number of load cycles compared to the number of cycles that cause low-cycle fatigue.

The engineering plan referenced in special condition no. 13(b)(1) informs the manufacturing and service management processes of essential information that ensures the life limit of a part is valid. The engineering plan provides methods for verifying the characteristics and qualities assumed in the design data using methods that are suitable for the part criticality. The engineering plan informs the manufacturing process of the attributes that affect the life of the part. The engineering plan, manufacturing plan, and service management plan are related in that assumptions made in the engineering plan are linked to how a part is manufactured and how that part is maintained in service. For example, environmental effects on life limited electric engine parts, such as humidity, might not be consistent with the assumptions used to design the part. BETA must ensure that the engineering plan is complete, available, and acceptable to the Administrator.

The term ''manufacturing plan,'' referenced in special condition no. 13(b)(2), is the collection of data required to translate documented engineering design criteria into physical parts, and to verify that the parts comply with the properties established by the design data. Because engines are not intentionally tested to failure during a certification program, documents and processes used to execute production and quality systems required by § 21.137 guarantee inherent expectations for performance and durability. These systems limit the potential manufacturing outcomes to parts that are consistently produced within design constraints.

The manufacturing plan and service management plan ensure that essential information from the engineering plan, such as the design characteristics that safeguard the integrity of critical and life-limited parts, is consistently produced and preserved over the lifetime of those parts. The manufacturing plan includes special processes and production controls to prevent inclusion of manufacturing-induced anomalies, which can degrade the part's structural integrity. Examples of manufacturing-induced anomalies are material contamination, unacceptable grain growth, heat-affected areas, and residual stresses.

The service-management plan ensures the method and assumptions used in the engineering plan to determine the part's life remain valid by enabling corrections identified from in-service experience, such as service-induced anomalies and

unforeseen environmental effects, to be incorporated into the design process. The service-management plan also becomes the ICA for maintenance, overhaul, and repairs of the part.

Lubrication System: Special condition no. 14 requires BETA to ensure that the lubrication system is designed to function properly between scheduled maintenance intervals and to prevent contamination of the engine bearings. This special condition also requires BETA to demonstrate the unique lubrication attributes and functional capability of the BETA Model H500A electric engine design.

The corresponding part 33 regulations include provisions for lubrication systems used in reciprocating and turbine engines. The part 33 requirements account for safety issues associated with specific reciprocating and turbine engine system configurations. These regulations are not appropriate for the BETA Model H500A electric engines. For example, electric engines do not have a crankcase or lubrication oil sump. Electric engine bearings are sealed, so they do not require an oil circulation system. The lubrication system in these engines is also independent of the propeller pitch control system. Therefore, special condition no. 14 incorporates only certain requirements from the part 33 regulations.

Power Response: Special condition no. 15 requires the design and construction of the BETA Model H500A electric engines to enable an increase from the minimum—

(1) power setting to the highest rated power without detrimental engine effects, and

(2) within a time interval appropriate for the intended aircraft application.

The engine control system governs the increase or decrease in power in combustion engines to prevent too much (or too little) fuel from being mixed with air before combustion. Due to the lag in rotor response time, improper fuel/air mixtures can result in engine surges, stalls, and exceedances above rated limits and durations. Failure of the combustion engine to provide thrust, maintain rotor speeds below rotor burst thresholds, and keep temperatures below limits can have engine effects detrimental to the aircraft. Similar detrimental effects are possible in the BETA Model H500A electric engines, but the causes are different. Electric engines with reduced power response time can experience insufficient thrust to the aircraft, shaft over-torque, and over-stressed rotating components, propellers, and critical propeller parts. Therefore, this special condition is necessary.

Continued Rotation: Special condition no. 16 requires BETA to design the Model H500A electric engines such that, if the main rotating systems continue to rotate after the engine is shut down while in-flight, this continued rotation will not result in any hazardous engine effects.

The main rotating system of the BETA Model H500A electric engines consists of the rotors, shafts, magnets, bearings, and wire windings that convert electrical energy to shaft torque. For the initial aircraft application, this rotating system must continue to rotate after the power source to the engine is shut down. The safety concerns associated with this special condition are substantial asymmetric aerodynamic drag that can cause aircraft instability, loss of control, and reduced efficiency; and may result in a forced landing or inability to continue safe flight.

Safety Analysis: Special condition no. 17 requires BETA to comply with § 33.75(a)(1) and (a)(2), which require the applicant to conduct a safety analysis of the engine, and which would otherwise be applicable only to turbine aircraft engines. Additionally, this special condition requires BETA to assess its engine design to determine the likely consequences of failures that can reasonably be expected to occur. The failure of such elements, and associated prescribed integrity requirements, must be stated in the safety analysis.

A primary failure mode is the manner in which a part is most likely going to fail. Engine parts that have a primary failure mode, a predictable life to the failure, and a failure consequence that results in a hazardous effect, are life-limited or critical parts. Some life-limited or critical engine parts can fail suddenly in their primary failure mode, from prolonged exposure to normal engine environments such as temperature, vibration, and stress, if those engine parts are not removed from service before the damage mechanisms progress to a failure. Due to the consequence of failure, these parts are not allowed to be managed by on-condition or probabilistic means because the probability of failure cannot be sensibly estimated in numerical terms. Therefore, the parts are managed by compliance with integrity requirements, such as mandatory maintenance (life limits, inspections, inspection techniques), to ensure the qualities, features, and other attributes that prevent the part from failing in its primary failure mode are preserved throughout its service life. For example, if the number of engine cycles to failure are predictable and can be associated with specific design characteristics, such as material properties, then the applicant can manage the engine part with life limits.

Complete or total power loss is not assumed to be a minor engine event, as it is in the turbine engine regulation § 33.75, to account for experience data showing a potential for higher hazard levels from power loss events in single-engine general aviation aircraft. The criteria in these special conditions apply to an engine that continues to operate at partial power after a single electrical or electronic fault or failure. Total loss of power is classified at the aircraft level using special condition nos. 10(g) and 33(h).

Ingestion: Special condition no. 18 requires BETA to ensure that these engines will not experience unacceptable power loss or hazardous engine effects from ingestion. The associated regulations for turbine engines, §§ 33.76, 33.77, and 33.78, are based on potential performance impacts and damage from birds, ice, rain, and hail being ingested into a turbine engine that has an inlet duct, which directs air into the engine for combustion, cooling, and thrust. By contrast, the BETA electric engines are not configured with inlet ducts.

An ''unacceptable'' power loss, as used in special condition no. 18(b), is such that the power or thrust required for safe flight of the aircraft becomes unavailable to the pilot. The specific amount of power loss that is required for safe flight depends on the aircraft configuration, speed, altitude, attitude, atmospheric conditions, phase of flight, and other circumstances where the demand for thrust is critical to safe operation of the aircraft.

Liquid and Gas Systems: Special condition no. 19 requires BETA to ensure that systems used for lubrication or cooling of engine components are designed and constructed to function properly. Also, if a system is not self-contained, the interfaces to that system would be required to be defined in the engine installation manual. Systems for the lubrication or cooling of engine components can include heat exchangers, pumps, fluids, tubing, connectors, electronic devices, temperature sensors and pressure switches, fasteners and brackets, bypass valves, and metallic chip detectors. These systems allow the electric engine to perform at extreme speeds and temperatures for durations up to the maintenance intervals without exceeding temperature limits or predicted deterioration rates.

Vibration Demonstration: Special condition no. 20 requires BETA to ensure the engine—

(1) is designed and constructed to function throughout its normal operating range of rotor speeds and engine output power without inducing excessive stress caused by engine vibration, and

(2) design undergoes a vibration survey.

The vibration demonstration is a survey that characterizes the vibratory attributes of the engine. It verifies that the stresses from vibration do not impose excessive force or result in natural frequency responses on the aircraft structure. The vibration demonstration also ensures internal vibrations will not cause engine components to fail. Excessive vibration force occurs at magnitudes and forcing functions or frequencies, which may result in damage to the aircraft. Stress margins to failure add conservatism to the highest values predicted by analysis for additional protection from failure caused by influences beyond those quantified in the analysis. The result of the additional design margin is improved engine reliability that meets prescribed thresholds based on the failure classification. The amount of margin needed to achieve the prescribed reliability rates depends on an applicant's experience with a product. The FAA considers the reliability rates when deciding how much vibration is ''excessive.''

Overtorque: Special condition no. 21 requires BETA to demonstrate that the engine is capable of continued operation without the need for maintenance if it experiences a certain amount of overtorque.

BETA's electric engine converts electrical energy to shaft torque, which is used for propulsion. The electric motor, controller, and high-voltage systems control the engine torque. When the pilot commands power or thrust, the engine responds to the command and adjusts the shaft torque to meet the demand. During the transition from one power or thrust setting to another, a small delay, or latency, occurs in the engine response time. While the engine dwells in this time interval, it can continue to apply torque until the command to change the torque is applied by the engine control. The allowable amount of overtorque during operation depends on the engine's response to changes in the torque command throughout its operating range.

Calibration Assurance: Special condition no. 22 requires BETA to subject the engine to calibration tests to establish its power characteristics and the conditions both before and after the endurance and durability demonstrations specified in special condition nos. 23 and 26. The calibration test requirements specified in § 33.85 only apply to the endurance test specified in § 33.87, which is applicable only to turbine engines. The FAA determined that the methods used for accomplishing those tests for turbine engines are not appropriate for electric engines. The calibration tests in § 33.85 have provisions applicable to ratings that are not relevant to the BETA Model H500A electric engines. Special condition no. 22 allows BETA to demonstrate the endurance and durability of the electric engine either together or independently, whichever is most appropriate for the engine qualities being assessed. Consequently, the special condition applies the calibration requirement to both the endurance and durability tests.

Endurance Demonstration: Special condition no. 23 requires BETA to perform an endurance demonstration test that is acceptable to the Administrator. The Administrator will evaluate the extent to which the test exposes the engine to failures that could occur when the engine is operated at up to its rated values, and determine if the test is sufficient to show that the engine design will not exhibit unacceptable effects in service, such as significant performance deterioration, operability restrictions, and engine power loss or instability, when it is run repetitively at rated limits and durations in conditions that represent extreme operating environments.

Temperature Limit: Special condition no. 24 requires BETA to ensure the engine can endure operation at its temperature limits plus an acceptable margin. An ''acceptable margin,'' as used in the special condition, is the amount of temperature above that required to prevent the least capable engine allowed by the type design, as determined by § 33.8, from failing due to temperature-related causes when operating at the most extreme engine and environmental thermal conditions.

Operation Demonstration: Special condition no. 25 requires the engine to demonstrate safe operating characteristics throughout its declared flight envelope and operating range. Engine operating characteristics define the range of functional and performance values the BETA Model H500A electric engines can achieve without incurring hazardous effects. The characteristics are requisite capabilities of the type design that qualify the engine for installation into aircraft and that determine aircraft installation requirements. The primary engine operating characteristics are assessed by the tests and demonstrations that would be required by these special conditions. Some of these characteristics are shaft output torque, rotor speed, power consumption, and engine thrust response. The engine performance data BETA will use to certify the engine must account for installation loads and effects. These are aircraft-level effects that could affect the engine characteristics that are measured when the engine is tested on a stand or in a test cell. These effects could result from elevated inlet cowl temperatures, aircraft maneuvers, flowstream distortion, and hard landings. For example, an engine that is run in a sea-level, static test facility could demonstrate more capability for some operating characteristics than it will have when operating on an aircraft in certain flight conditions. Discoveries like this during certification could affect engine ratings and operating limits. Therefore, the installed performance defines the engine performance capabilities.

Durability Demonstration: Special condition no. 26 requires BETA to subject the engine to a durability demonstration. The durability demonstration must show that the engine is designed and constructed to minimize the development of any unsafe condition between maintenance intervals or between engine replacement intervals if maintenance or overhaul is not defined. The durability demonstration also verifies that the ICA is adequate to ensure the engine, in its fully deteriorated state, continues to generate rated power or thrust, while retaining operating margins and sufficient efficiency, to support the aircraft safety objectives. The amount of deterioration an engine can experience is restricted by operating limitations and managed by the engine ICA. Section 33.90 specifies how maintenance intervals are established; it does not include provisions for an engine replacement. Electric engines and turbine engines deteriorate differently; therefore, BETA will use different test effects to develop maintenance, overhaul, or engine replacement information for their electric engine.

System and Component Tests: Special condition no. 27 requires BETA to show that the systems and components of the engine perform their intended functions in all declared engine environments and operating conditions.

Sections 33.87 and 33.91, which are specifically applicable to turbine engines, have conditional criteria to

decide if additional tests will be required after the engine tests. The criteria are not suitable for electric engines. Part 33 associates the need for additional testing with the outcome of the § 33.87 endurance test because it is designed to address safety concerns in combustion engines. For example, § 33.91(b) requires the establishment of temperature limits for components that require temperature-controlling provisions, and § 33.91(a) requires additional testing of engine systems and components where the endurance test does not fully expose internal systems and components to thermal conditions that verify the desired operating limits. Exceeding temperature limits is a safety concern for electric engines. The FAA determined that the § 33.87 endurance test is not appropriate for testing the electronic components of electric engines because mechanical energy is generated differently by electronic systems than it is by the thermal conditions in turbine engines. Additional safety considerations also need to be addressed in the test. Therefore, special condition no. 27 is a performance-based requirement that allows BETA to determine when engine systems and component tests are necessary and to determine the appropriate limitations of those systems and components used in the BETA Model H500A electric engine.

Rotor Locking Demonstration: Special condition no. 28 requires the engine to demonstrate reliable rotor locking performance and that no hazardous effects will occur if the engine uses a rotor locking device to prevent shaft rotation.

Some engine designs enable the pilot to prevent a propeller shaft or main rotor shaft from turning while the engine is running, or the aircraft is in-flight. This capability is needed for some installations that require the pilot to confirm the functionality of certain flight systems before takeoff. The BETA engine installations are not limited to aircraft that will not require rotor locking. Section 33.92 prescribes a test that may not include the appropriate criteria to demonstrate sufficient rotor locking capability for these engines. Therefore, this special condition is necessary.

The special condition does not define ''reliable'' rotor locking but allows BETA to classify the hazard as major or minor and assign the appropriate quantitative criteria that meet the safety objectives required by special condition no. 17 and the applicable portions of § 33.75.

Teardown Inspection: Special condition no. 29 requires BETA to perform a teardown or non-teardown evaluation after the endurance, durability, and overtorque demonstrations, based on the criteria in special condition no. 29(a) or (b).

Special condition no. 29(b) includes restrictive criteria for ''non-teardown evaluations'' to account for electric engines, sub-assemblies, and components that cannot be disassembled without destroying them. Some electrical and electronic components like BETA's are constructed in an integrated fashion that precludes the possibility of tearing them down without destroying them. The special condition indicates that, if a teardown cannot be performed in a non-destructive manner, then the inspection or replacement intervals must be established based on the endurance and durability demonstrations. The procedure for establishing maintenance should be agreed upon between the applicant and the FAA prior to running the relevant tests. Data from the endurance and durability tests may provide information that can be used to determine maintenance intervals and life limits for parts. However, if life limits are required, the lifing procedure is established by special condition no. 13, Critical and Life-Limited Parts, which corresponds to § 33.70. Therefore, the procedure used to determine which parts are life-limited, and how the life limits are established, requires FAA approval, as it does for § 33.70. Sections 33.55 and 33.93 do not contain similar requirements because reciprocating and turbine engines can be completely disassembled for inspection.

Containment: Special condition no. 30 requires the engine to have containment features that protect against likely hazards from rotating components unless BETA can show the margin to rotor burst does not justify the need for containment features. Rotating components in electric engines are typically disks, shafts, bearings, seals, orbiting magnetic components, and the assembled rotor core. However, if the margin to rotor burst does not unconditionally rule out the possibility of a rotor burst, then the special condition requires BETA to assume a rotor burst could occur and design the stator case to contain the failed rotors, and any components attached to the rotor that are released during the failure. In addition, BETA must also determine the effects of subsequent damage precipitated by a main rotor failure and characterize any fragments that are released forward or aft of the containment features. Further, decisions about whether the BETA engine requires containment features, and the effects of any subsequent damage following a rotor burst, should be based on test or validated analysis. The fragment energy levels, trajectories, and size are typically documented in the installation manual because the aircraft will need to account for the effects of a rotor failure in the aircraft design. The intent of this special condition is to prevent hazardous engine effects from structural failure of rotating components and parts that are built into the rotor assembly.

General Conduct of Tests: Special condition no. 32 requires BETA to—

(1) Include any scheduled maintenance.

(2) Include any maintenance, in addition to the scheduled maintenance, which was needed during the test to satisfy the applicable test requirements; and

(3) Conduct any additional tests that the Administrator finds necessary, as warranted by the test results.

For example, certification endurance test shortfalls might be caused by omitting some prescribed engine test conditions, or from accelerated deterioration of individual parts arising from the need to force the engine to operating conditions that drive the engine above the engine cycle values of the type design. If an engine part fails during a certification test, the entire engine might be subjected to penalty runs, with a replacement or newer part design installed on the engine, to meet the test requirements. Also, the maintenance performed to replace the part, so that the engine could complete the test, would be included in the engine ICA. In another example, if the applicant replaces a part before completing an engine certification test because of a test facility failure and can substantiate the part to the Administrator through bench testing, they might not need to substantiate the part design using penalty runs with the entire engine.

The term ''excessive'' is used to describe the frequency of unplanned engine maintenance, and the frequency of unplanned test stoppages, to address engine issues that prevent the engine from completing the tests in special condition nos. 32(b)(1) and (2), respectively. Excessive frequency is an objective assessment from the FAA's analysis of the amount of unplanned maintenance needed for an engine to complete a certification test. The FAA's assessment may include the reasons for the unplanned maintenance, such as the effects test facility equipment may have on the engine, the inability to simulate a realistic engine operating environment, and the extent to which an engine requires modifications to

complete a certification test. In some cases, the applicant may be able to show that unplanned maintenance has no effect on the certification test results, or they might be able to attribute the problem to the facility or test-enabling equipment that is not part of the type design. In these cases, the ICA will not be affected. However, if BETA cannot reconcile the amount of unplanned service, then the FAA may consider the unplanned maintenance required during the certification test to be ''excessive,'' prompting the need to add the unplanned maintenance to mandatory ICA to comply with the certification requirements.

Engine electrical systems: The current requirements in part 33 for electronic engine control systems were developed to maintain an equivalent level of safety demonstrated by engines that operate with hydromechanical engine control systems. At the time § 33.28 was codified, the only electrical systems used on turbine engines were low-voltage, electronic engine control systems (EEC) and high-energy spark-ignition systems. Electric aircraft engines use high-voltage, high-current electrical systems and components that are physically located in the motor and motor controller. Therefore, the existing part 33 control system requirements do not adequately address all the electrical systems used in electric aircraft engines. Special condition no. 33 is established using the existing engine control systems requirement as a basis. It applies applicable airworthiness criteria from § 33.28 and incorporates airworthiness criteria that recognize and focus on the electrical power system used in the engine.

Special condition no. 33(b) ensures that all aspects of an electrical system, including generation, distribution, and usage, do not experience any unacceptable operating characteristics.

Special condition no. 33(c) requires the electrical power distribution aspects of the electrical system to provide the safe transfer of electrical energy throughout the electric engine.

The term ''abnormal conditions'' used in special condition no. 33(c)(2) is based on the term ''abnormal operation'' used in MIL–STD–704F ''Aircraft Electric Power Characteristics'' which defines normal operation and abnormal operation. MIL–STD–704F is a standard that ensures compatibility between power sources that provide power to the aircraft's electrical systems and airborne equipment that receive power from the power source. This standard also establishes technical criteria for aircraft electric power. The term ''abnormal conditions'' refers to various engine operating conditions such as:

- System or component characteristics outside of normal statistical variation from circumstances such as systems degradation, installation error, and engine response to fault conditions;
- Unusual environmental conditions from extreme temperature, humidity, vibration, lightning, high-intensity radiated field (HIRF), atmospheric neutron radiation; and
- Unusual and infrequent events such as landing on icy runways, rejected take-offs or go-arounds, extended ground idling or taxiing in a hot environment, and abrupt load changes from foreign object damage or engine contamination.

The phrase ''safe transmission of electric energy'' used in special condition no. 33(c)(3) refers to the transmission of electrical energy in a manner that supports the operation of the electric engine(s) and the aircraft safety objectives without detrimental effects such as uncontrolled fire or structural failure due to severe overheating.

Special condition no. 33(d) requires the engine electrical system to be designed such that the loss, malfunction, or interruption of the electrical power source, or power conditions that exceed design limits, will not result in a hazardous engine effect.

Special condition no. 33(e) requires BETA to identify and declare, in the engine installation manual, the characteristics of any electrical power supplied from the aircraft to the engine, or electrical power supplied from the engine to the aircraft via energy regeneration, and any other characteristics necessary for safe operation of the engine.

Special condition no. 33(f) requires BETA to demonstrate that systems and components will operate properly up to environmental limits, using special conditions, when such limits cannot be adequately substantiated by the endurance demonstration, validated analysis, or a combination thereof. The environmental limits referred to in this special condition include temperature, vibration, HIRF, and all others addressed in RTCA DO–160G, ''Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments.''

Special condition 33(g) requires BETA to evaluate various electric engine system failures to ensure that these failures will not lead to unsafe engine conditions. The evaluation includes single-fault tolerance, ensures no single electrical or electronic fault or failure would result in hazardous engine effects, and ensures that any failure or malfunction leading to local events in the intended aircraft application does not result in certain hazardous engine effects. The special condition also implements integrity requirements, criteria for LOTC/LOPC events, and an acceptable LOTC/LOPC rate.

Special condition 33(h) requires BETA to conduct a safety assessment of the engine electrical system to support the safety analysis in special condition no. 17. This safety assessment provides engine response to failures, and rates of these failures, which can be used at the aircraft safety assessment level.

Discussion of Comments

The FAA issued a notice of proposed special conditions (NPSC) Docket No. FAA–2022–1641 for the BETA Model H500A electric engines, which was published in the **Federal Register** on March 7, 2024 (89 FR 16474).

The FAA Received Comments From Eight Commenters

The FAA received comments from Transport Canada (TC), Transport Canada Civil Aviation (TCCA), United Parcel Service Flight Forward (UPSFF), Association for Uncrewed Vehicle Systems International (AUVSI), magniX USA, Inc. (magniX), General Aviation Manufacturers Association (GAMA), an individual, and an anonymous commenter.

The FAA received comments from TCCA.

TCCA indicated the discussion of proposed special condition no.10(e), Environmental limits of engine cooling systems, in the preamble states that the environmental limits referred to in this special condition are addressed in RTCA DO–160G. However, TCCA explained that some of the existing RTCA DO–160G test specifications, methods, and categories may not be adequate for high voltage systems, such as the high voltage components of this engine. Accordingly, TCCA recommended adding the language ''or other appropriate industry standards'' at the end of the discussion of special condition no. 10(e) in the preamble.

The FAA does not agree with the recommended change. Although RTCA DO–160G is not sufficient for the high voltage systems used in the BETA Model H500A electric engine motor and inverter/controller, tests that are appropriate for the BETA engine will be developed in accordance with special condition nos. 1(b) and 1(c) using the testing techniques in RTCA DO–160G and other aerospace environmental

documents. Independent tests are done for radiated and conducted susceptibility and compared to the RTCA DO–160G HIRF spectrum for susceptibility to ensure all electric engine radio frequency energy emissions inherent to the engine design are addressed. If the equipment under test passes the emission test in RTCA–DO–160 the susceptibility spectrum is covered by RTCA DO–160G. The applicant can use the RTCA DO–160G test. If not, the spectrum from the emission test would be analyzed and could be adjusted for the applicant's design and applied during the susceptibility test with FAA concurrence. No changes were made to these special conditions as a result of this comment.

TCCA also indicated special condition no. 2, Engine ratings and operating limits, should require that component life be considered when establishing the engine operating limits. They explained, the engine system or the electrical motor design may have components or parts that require a life limit. For example, the insulation on the high voltage system wiring may degrade with time and operating conditions. TCCA requested the FAA add ''(f) Component life'' to special condition no. 2, Engine Ratings and Operating Limits, and explained that component life should be considered when establishing the engine operating limits, similar to § 33.07(b)(7).

The FAA does not concur with TCCA's request. Component life is an expected outcome of special conditions nos. 13 (Critical and life-limited parts) and 17 (Safety analysis). Special condition no. 17 determines whether special condition no. 13 applies to the engine part. Special condition no 13 determines the mandatory replacement times (component life) and implements a maintenance program to manage these parts composed of an engineering plan, manufacturing plan, and service management plan. No changes were made to these special conditions as a result of this comment.

TCCA requested the FAA confirm that special condition no. 33(a), applicability for engine electrical systems, is not applicable to energy storage systems (ESS) but it does include the interface between the electric engine and the propulsion power source. TCCA further explained this comment is a request for clarification, rather than modification, of this special condition.

Special condition no. 33 does not apply to ESS but does apply to the interface between the engine and ESS. No changes were made to these special conditions as a result of this comment.

TCCA stated that proposed special condition no. 33(b), Electrical systems, is written in a way that implies electrical load shedding is mandatory even when not needed and explained electrical load shedding should only be implemented if required. TCCA recommended adding ''if required'' between parenthesis like the following: ''. . . , and electrical load shedding (if required), . . .'' to special condition no. 33(b).

The FAA concurs with TCCA's recommendation and has revised special condition no. 33(b) accordingly. Load shedding is a capability of the electric engine's power distribution system.

TCCA requested the FAA define the term ''abnormal condition,'' which is used in special condition 33(c)(2), Electrical power distribution, and offered several potential interpretations of the term. They also asked if an abnormal condition is any failure condition not considered extremely improbable, and if it is equivalent to the definition from MIL–STD–704F. The FAA's use of the term ''abnormal conditions'' does not refer to internal malfunctions or failures. It refers to operating conditions such as:

- System or components outside of normal statistical variation due to degradation, or installation error
- Unusual environmental conditions such as extreme temperature, humidity, FOD impact, severe lightning, HIRF, or atmospheric radiation
- Infrequent scenarios such as landing on icy runways, rejected take-offs or balked landings, extended ground idling, or taxiing in hot environments.

TCCA also requested the FAA provide a definition for ''safe transmission,'' which is used in special condition 33(c)(3).

The FAA concurs with TCCA's requests and has added definitions of the terms ''abnormal condition'' and ''safe transmission'' to the preamble discussion for special condition no. 33.

TCCA observed that proposed special condition nos. 33(e)(1) and (e)(2), Electrical power characteristics, were linked with an ''or'' indicating that either condition could be applied, but not both. TCCA stated both (e)(1) and (e)(2) are applicable, and therefore recommended the FAA revise special condition no. 33(e) to replace the ''or'' with an ''and.''

The FAA concurs with TCCA's recommendation and has revised special condition no. 33(e) accordingly.

TCCA indicated that noise certification requirements are applicable at the airframe level and not at the engine level. TCCA explained the NPSC implies that an engine applicant demonstration of compliance to 14 CFR part 36 is part of the special conditions. However, TCCA stated there is no definition of requirements within the special conditions other than the preamble section titled the Type Certification Basis. TCCA requested that the FAA remove the statement ''In addition to the applicable airworthiness regulations and special conditions, the BETA Model H500A electric engines must comply with the noise certification requirements of 14 CFR part 36'' from the preamble. GAMA also commented on this issue and stated the noise certification requirements do not apply to engines and requested the FAA remove this statement from the preamble.

The FAA concurs with TCCA's and GAMA's requests and has updated the preamble of these special conditions accordingly.

TCCA suggested that the reference to ''consensus standards'' in proposed special condition 1(b), Applicability, may not be necessary. TCCA stated that consensus standards are not a means of compliance but instead, they are derived/alternate requirements (*i.e.,* ASTM) that are formulated by industry to be used in lieu of published regulatory guidance material. TCCA further suggested that the use of derived/alternate requirements in lieu of the published standards is to be accepted by the Administrator as being equivalent to the published standards. Then, the means of compliance to the consensus standards are to be accepted by the Administrator. TCCA recommended reducing the text in special condition no. 1(b) to the following: ''(b) the applicant must comply with this part using a means of compliance accepted by the administrator.''

The FAA does not concur with TCCA's suggested change. The reference to consensus standards provides clarification about potential sources of information that may be used to determine a means of compliance. The comment indicates a need to clarify how consensus standards are used. For example, consensus standards developed by the standards development organizations (SDOs) typically function as a method of compliance to 14 CFR requirements or special conditions. Published FAA guidance can function either as a means of compliance, method of compliance, or both. Special condition 1(b) permits consensus standards to be used for showing compliance to certification requirements, but they are not a

requirement of that special condition. Therefore, special condition 1(b) supplements the performance-based special conditions by requiring a means of compliance, which could include consensus standards developed by SDOs. Further, special condition 1(b) is intended to be equivalent to § 23.2010(a), which also refers to consensus standards as a potential means of compliance. No changes were made to the special conditions as a result of this comment.

TCCA observed the BETA proposed special condition no. 17 does not include a reference to § 33.75(a)(3) which appears in the magniX special conditions and recommended that the FAA explain this difference in the discussion for that special condition in the preamble to avoid ambiguity between the relative project requirements.

The FAA does not concur with TCCA's recommendation. The NPSC for the magniX magni350 and magni650 model electric engines originally proposed to incorporate § 33.75(a)(3) into special condition no. 17. The FAA received a comment suggesting that § 33.75(a)(3) may not be needed for those engines. In the final special conditions (Docket No. FAA–2020–0894, Special Conditions No. 33–022–SC), the FAA agreed with the comment and removed the reference to § 33.75(a)(3). No changes were made to these special conditions as a result of this comment.

The FAA received comments from TC.

TC disagreed with the text in proposed special condition nos. 17(a) and 17(c) which say, ''The applicant must comply . . .'' TC stated that the onus to show compliance with the applicable requirements with the intent to obtain a type certificate is on the applicant and that the elements that comply with the requirements themselves are those objects of the type certificate, such as the engine and its systems. TC further explained it is not clear to state that the applicant must comply, where it is in fact the engine/systems which must comply with the requirements. Instead, the applicant shows compliance. TC suggested changing the phrase to read ''The applicant must show compliance . . .''

TC's proposed change is not necessary. Section 21.20, ''Compliance with Applicable Requirements'' contains an example that supports the language used in special conditions nos. 17(a) and (c). Specifically, § 21.20(b) specifies the applicant must ''provide a statement certifying that the applicant has complied with the applicable requirements,'' which indicates the applicant complies with the applicable requirements. . No changes were made as a result of this comment.

TC observed the text in proposed special condition no. 17(d)(1), Safety Analysis, does not include special condition no. 31, Operation with Variable Pitch Propeller. TC recommended that the FAA either add a reference to special condition no. 31 in special condition no. 17(d)(1) because BETA's electric engine may be installed with a variable pitch propeller or provide a rationale for not including it.

The FAA does not concur with TC's suggestion to add a reference to special condition no. 31. Adding special condition no. 31 is not necessary because the specific engine model BETA intends to certify is not designed to use a variable pitch propeller. No changes were made to the special conditions as a result of this comment.

TC indicated there is a similar electrical engine special condition in the magniX special conditions (Special Conditions No. 33–022–SC) that contains an ingestion requirement that does not appear in the BETA special conditions. TC referred to special condition no. 18(d) in the magniX special conditions, which requires ingestion sources that are not evaluated must be declared in the engine installation manual. TC recommended that the FAA either revise the BETA special conditions to add this requirement or provide the rationale for not including it.

The FAA does not concur with TC's request to revise the BETA special conditions to include special condition no. 18(d) from the magniX special conditions. Special condition no. 18(d) was intended to ensure ingestion sources that are not applicable to an electric engine are enunciated in the engine documentation. The list of required ingestion sources in BETA special condition nos. 18(a) and (b) are more prescriptive compared to the ingestion requirements in the published magniX special condition no. 18(a). Therefore, the FAA has determined special condition no. 18(d) is not necessary to include in the BETA special conditions because exceptions to the ingestion requirement would be specified and managed using special condition no. 18(c), which is similar to how exceptions are managed by the existing part 33 ingestion requirements. No changes were made to the special conditions as a result of this comment.

TC noted that proposed special condition no. 33(c)(1) introduces the term ''electrical power plant'' and recommended that the FAA update the preamble to describe an electrical power plant.

The FAA disagrees with TC's recommendation to define ''electrical power plant'' because the FAA revised special condition no. 33(c)(1) in these final special conditions to change the term ''electrical power plant'' to ''powerplant,'' as that term is defined in part 23, subpart E, in § 23.2400(a) powerplant installation, to include each component necessary for propulsion, which affects propulsion safety, or provides auxiliary power to the airplane, and in the installation requirements in subpart E of parts 25, 27, and 29.

TC observed that the proposed system safety assessments in proposed special condition no. 33(h), and proposed special condition no.10(g) are different in that special condition no. 10(g) requires the rates of hazardous and major faults to be declared in the engine installation manual and special condition no. 33(h) does not. TC recommended that the FAA either revise special condition no. 33(h) to match special condition no. 10(g) or provide a rationale for why they are different.

The FAA agrees with TC's recommendation and has revised final special condition no. 33(h) to match special condition no. 10(g).

The FAA received comments from GAMA.

GAMA recommended that the FAA align the special conditions for the H500A electric engine with the electric engine requirements included in the certification basis for special class powered lift aircraft that certify an electric engine as part of the aircraft type certification. GAMA stated that there are technical variations between the H500A proposed special conditions and the electric engine airworthiness criteria outlined in the Special Class Airworthiness Criteria for the powered-lift and cited special condition no. 17(c) and special condition no. 33(c) as examples of these technical differences. GAMA further stated these variations could lead to two electric engines used in the same aircraft having different requirements based solely on whether the engine is certified as part of the aircraft or under part 33. AUVSI also commented on the importance of applying consistent requirements across projects and requested the FAA substantiate any inconsistencies introduced to the electric engine requirements.

There are no intended technical differences between the proposed special class airworthiness criteria for the powered lift in draft Advisory

Circular 21.17–4 (AC 21.17–4) and the BETA special conditions. For example, the corresponding criteria to BETA special condition nos. 17(c) and 33(c) are PL.3375(f) and PL.3326(c) respectively. The engine requirements are documented differently between the BETA special conditions and powered-lift airworthiness criteria proposed in draft AC 21.17–4 because special conditions are written in accordance with the requirements of § 21.16, and the powered-lift airworthiness criteria in draft AC 21.17–4 are not specific to one applicant. There are also some minor differences in the documentation requirements because engines are approved with the special class aircraft, so some engine details may be included in the aircraft manuals. No changes were made to the special conditions as a result of this comment.

GAMA indicated proposed special condition no. 9, Overspeed, lacks clarity regarding whether ''rotor'' refers to an internal electric engine component or an actual propulsive propeller. GAMA recommended the FAA provide the necessary clarification to address this ambiguity.

The FAA agrees with GAMA's recommendation. The term ''rotor'' in the proposed special conditions is intended to refer to an engine component and not a propulsive propeller. A rotor in an electric engine may consist of a circular disk and magnets fixed at the outer circumference that rotates inside a stationary casing configured with electrical windings (or coils), or a rotating cylindrical casing with magnets fixed on the inside surface that rotates around a stationary set of windings (or coils). Each configuration is attached to a rotating shaft that drives a propulsive device, such as a propeller. Project-specific decisions will be made regarding which engine parts are applicable to the overspeed requirement. No changes were made to the special conditions as a result of this comment.

GAMA stated that proposed special condition nos. 30(a) and (b), Containment, utilize language tailored to an engine design featuring a non-rotating stator situated outside the rotor. GAMA recommended the FAA explore a rule version that is less design-specific. GAMA advised against presuming that all rotating components possess a case, particularly that the rotor is contained within the stator.

The FAA does not concur with GAMA's recommendation Special condition 30(a) is intended to account for rotor designs with exceedingly large margins to a rotor burst. The special condition does not specify a particular rotor design. However, the amount of margin needed to satisfy the requirement would be determined based on the engine's design. Special condition 30(b) is intended to account for rotors located inside a static stator case. No changes were made to the special conditions as a result of this comment.

GAMA commented proposed special condition nos. 33(c)(1) and (c)(3), Electrical power distribution for engine electrical systems, set forth distinct criteria for the automatic measures needed when electrical-energy generation encounters faults, which diverges from the corresponding requirements in the special class airworthiness criteria for powered-lift. GAMA indicated there are no evident variations in electric engine configurations that warrant this inconsistency. GAMA recommended that the FAA align these regulations to ensure that electric engines certified as part of an aircraft or under part 33 adhere to uniform standards.

Proposed special condition nos. 33(c)(1) and (c)(3) are not the same as the corresponding engine requirements in the powered-lift airworthiness criteria used in another project. Proposed special condition no. 33(c)(1) protects engine electrical systems from faulted electrical energy generation or storage devices. Proposed special condition no. 33(c)(3) prescribes a means of compliance (fault isolation) to address (c)(1), but the means of compliance should be tied to the safety assessment required in special condition no. 33(g), which accounts for aircraft-level effects from faulted electrical-energy generation or storage devices. The aircraft effects should not be assumed in the engine requirements, and therefore the FAA revised special condition no. 33(c)(3) to accommodate other potential protection systems that might be more appropriate. Accordingly, final special condition no. 33(c)(3) is changed to, ''The system must provide mechanical or automatic means of isolating a faulted electrical energy generation or storage device from leading to hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, or detrimental effects in the intended aircraft application.''

The phrase, ''or detrimental engine effects in the intended aircraft application'' was relocated to special condition no. 33(c)(3) to maintain the connection with special condition no. 33(g).

GAMA commented proposed special condition no. 33(g), Electrical system failures of engine electrical systems, extends beyond the comparable part 33 regulation § 33.28(d), which is originally limited to the engine control system. GAMA suggested that expanding this special condition to encompass the engine electrical system instead of solely the engine control system entails subjecting electrical components within the engine, such as windings, to failure requirements historically not applied to engine mechanical components. GAMA also stated that field experience indicates that component failures are unpredictable based on wear and susceptible to random failures. Electric engine components, like windings and insulation, are better addressed using methods akin to those applied to traditional engines to address mechanical failure aspects. GAMA recommended the FAA revise this special condition to align with the existing regulatory framework. The FAA does not concur with GAMA's recommendation. By their nature, FAA special conditions are issued when the ''existing regulatory framework'' is inadequate or insufficient. 14 CFR 21.16; see also Amdt. 21–51. The existing requirements for engine control systems were developed to address the failure characteristics of electrical systems. For combustion engines, the only electrical system is the engine control, but this is not the case for electric engines where electrical systems extend beyond those addressed by § 33.28(d). Special condition no. 33(g) for the BETA electric engine provides the same level of safety as § 33.28(d) by applying the safety criteria for electrical systems to all the electrical systems in the engine. This includes the high-voltage systems used in the electric engine. No changes were made to the special conditions as a result of this comment.

The FAA received several comments from an individual commenter and received similar comments from magniX (although these commenters provided separate comments).

An individual and magniX commented proposed special condition nos. 1(b) and (c) state that a means of compliance, which may include consensus standards, must be ''accepted by the Administrator'' and ''in a form and manner acceptable to the Administrator.'' The individual and magniX stated that these paragraphs are directly out of § 23.2010, which contains performance-based language. The individual and magniX considered the BETA electric engine special conditions to be largely prescriptive and not performance-based, which they stated would make special condition

nos. 1(b) and (c) superfluous. The individual suggested these requirements introduce a new regulatory layer to prescriptive requirements and may lead to inadvertent consequences, while magniX stated that requiring a performance-based process for establishing means of compliance with prescriptive regulations is unnecessary and overly burdensome to applicants and regulators. The individual and magniX recommended the FAA not adopt proposed special condition nos. 1(b) and (c), and the individual also recommended holding public consultations with stakeholders as was done when part 23 was being reworked into a performance-based form.

The FAA does not concur with the individual's and magniX's recommendation. While special conditions are rules of particular, not general applicability, the FAA expects that special condition nos. 1(b) and (c) support the FAA's transition to a performance-based approach for developing new requirements. Although the BETA special conditions are not prescriptive, they provide safety criteria that address hazards presented by the new electric engine technology used in the BETA H500A engine. Special condition nos. 1(b) and (c) will be used to incorporate the additional details that apply to the BETA H500A engine design using accepted means of compliance. No changes were made to these special conditions as a result of this comment.

GAMA and magniX commented that special condition nos. 10(g), 15(b), and 17(f) would require applicants to declare proprietary information in the engine installation manual, these documentation requirements establish a precedent beyond that required of their existing reciprocating or turbine counterparts, and these requirements increase the risk that sensitive information is disclosed. MagniX stated that while it is understood this information is used during aircraft-level certification efforts, traditional data sharing agreements sufficiently provide the integrator with the required information while respecting the proprietary nature of the data. MagniX also stated requiring additional data in the engine installation manual overly constrains the means whereby this information is shared when compared with established means, introducing additional commercial risk. GAMA also stated proposed special condition nos. 10(g), 15(b), and 17(f) are a requirement for a manufacturer to disclose sensitive proprietary safety analysis in the engine installation manual, a requirement not currently imposed on part 33 engines. Additionally, GAMA stated the FAA has not provided adequate justification for why an electric engine necessitates this information in a manual. An individual provided a similar comment regarding proposed special condition nos. 10(g) and 17(f), and stated that historically such information was captured in other documents such as the engine control systems interface control document and systems safety assessment, that were only provided to the installer.

MagniX requested the FAA not adopt the documentation requirements in proposed special conditions 10(g), 15(b), and 17(f), and proposed that these data be provided to integrators through generic ''installation instructions'' in lieu of the engine installation manual. GAMA also requested the FAA reconsider its approach and/or provide justification for the added requirement of disclosing sensitive proprietary safety analysis in the engine installation manual. An individual requested the FAA preserve the engine OEM's flexibility to document and protect proprietary data by changing ''installation manual'' to the more generic ''installation instructions,'' which consist of other documents such as interface control drawings, technical memorandums, or other installer requested documentation. The individual further stated that this change would harmonize the special condition with § 23.2400(e) which uses the verbiage of ''installation instructions,'' and this change could be promulgated to other special condition paragraphs which refer to the engine installation manual.

The FAA does not concur with magniX's and GAMA's comments that special conditions 10(g), 15(b), and 17(f) require disclosing sensitive information. The requirements cited in their comment do not require disclosure of sensitive information. As discussed in the NPSC, the documentation requirements in special conditions nos. 10(g), 15(b), and 17(f) are expected to ensure that the engine is used safely and properly by constraining the installation of electric engines to only aircraft types (configurations, flight capabilities, etc.) that were used by the engine manufacturer to determine the engine ratings, limits, performance characteristics, as well as the reliability and criticality of engine systems and parts.

These documentation requirements are intended, and the FAA finds necessary, to ensure enough information is included to safeguard compatibility between the electric engine and aircraft, and to prevent the engine from being used in an aircraft type that requires safety features or performance characteristics that are not available from a type certificated engine. For example, electric engines designed for vertical lift in distributed propulsion tilt-wing aircraft provide propulsion and act as flight control surfaces, and therefore these engines have different performance requirements than those used in conventional normal category airplanes. In addition, the FAA agrees with the commenters' suggestion to remove the requirement that specifies the information must be located in the engine installation manual. These special conditions do not need to specify the document that must have the information, but only that the information must be provided to the installer in accordance with the engine installation instructions under § 33.5, ''Instruction manual for installing and operating the engine.''. The proposed special conditions are modified to incorporate this change.

The FAA received a comment from UPSFF.

UPSFF requested that the FAA align these special conditions with the electric engine requirements included in the certification basis for special class powered lift aircraft that certify an electric engine as part of the aircraft type certification.

As stated previously, the engine requirements in the BETA special conditions are documented differently from proposed powered lift airworthiness criteria in draft AC 21.17–4 because special conditions are written in accordance with the requirements of § 21.16, and the proposed powered-lift airworthiness criteria in draft AC 21.17–4 are not specific to one applicant. Special conditions are project-specific rules of particular applicability, and the special conditions for this electric engine are based on certain novel or unusual design features. Special conditions may evolve to a general standard as more experience is gained with certifying the new technology (see Amdt. 21–51). No changes were made to these special conditions as a result of this comment.

The FAA received an anonymous comment. The commenter stated the reference to § 21.17(a) in the preamble of the NPSC seems contradictory to the language in § 21.17(b). The commenter explained that since § 21.17(b) applies to ''special classes of aircraft, including the engines and propellers installed thereon (*e.g.,* gliders, airships, and other nonconventional aircraft) . . .'' an electric engine would be installed on a special class of aircraft as described in § 21.17(b) and referring to § 21.17(a) seems to contradict the language in paragraph (b) of that section.

The FAA does not concur with the comment that indicates the reference to § 21.17(a) is contradictory to the language in § 21.17(b). Section 21.17(a) provides requirements for developing a certification basis for an established aviation product, which includes aircraft, engines, and propellers. The BETA electric engine is an aircraft engine, which falls under § 21.17(a), and therefore § 21.17(a) is the appropriate reference for this project. Section 21.17(b) provides requirements for developing a certification basis for special classes of aircraft, such as powered-lift. No changes were made as a result of this comment.

The FAA also determined that the following changes were necessary. The phrase, ''In addition'' is added to special condition no. 4, Fire protection, to connect the introduction sentence to (a) and (b) and avoid confusion. The FAA also revised the special conditions to use consistent references to hazardous engine effects. Therefore, the phrase ''as defined in special condition no. 17 of these special conditions'' was added wherever ''hazardous engine effects'' is mentioned.

The FAA recognizes energy regeneration might not be a feature for some electric engines that operate at their limits, so special condition no. 23 was changed to specify that ''The endurance demonstration must include increases and decreases of the engine's power settings, energy regeneration, and dwellings at the power settings and energy regeneration for sufficient durations that produce the extreme physical conditions the engine experiences at rated performance levels, operational limits, and at any other conditions or power settings, including energy regeneration that are required to verify the limit capabilities of the engine.''

In addition, proposed special condition no. 31 was not adopted because the specific engine model BETA intends to certify is not designed to use a variable pitch propeller. Except as discussed above, these special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to BETA Model H500A electric engines. Should BETA apply at a later date for a change to the type certificate to include another model on the same type certificate, incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only BETA Model H500A electric engines. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 33

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for BETA Technologies Inc. Model H500A electric engines. The applicant must also comply with the certification procedures set forth in part 21.

(1) Applicability

(a) Unless otherwise noted in these special conditions, the engine design must comply with the airworthiness standards for aircraft engines set forth in part 33, except for those airworthiness standards that are specifically and explicitly applicable only to reciprocating and turbine aircraft engines or as specified herein.

(b) The applicant must comply with this part using a means of compliance, which may include consensus standards, accepted by the Administrator.

(c) The applicant requesting acceptance of a means of compliance must provide the means of compliance to the FAA in a form and manner acceptable to the Administrator.

(2) Engine Ratings and Operating Limits

In addition to § 33.7(a), the engine ratings and operating limits must be established and included in the type certificate data sheet based on:

(a) Shaft power, torque, rotational speed, and temperature for:

(1) Rated takeoff power;

(2) Rated maximum continuous power; and

(3) Rated maximum temporary power and associated time limit.

(b) Duty cycle and the rating at that duty cycle. The duty cycle must be declared in the engine type certificate data sheet.

(c) Cooling fluid grade or specification.

(d) Power-supply requirements.

(e) Any other ratings or limitations that are necessary for the safe operation of the engine.

(3) Materials

The engine design must comply with § 33.15.

(4) Fire Protection

The engine design must comply with § 33.17(b) through (g). In addition—

(a) The design and construction of the engine and the materials used must minimize the probability of the occurrence and spread of fire during normal operation and failure conditions and must minimize the effect of such a fire.

(b) High-voltage electrical wiring interconnect systems must be protected against arc faults that can lead to hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions. Any non-protected electrical wiring interconnects must be analyzed to show that arc faults do not cause a hazardous engine effect.

(5) Durability

The engine design and construction must minimize the development of an unsafe condition of the engine between maintenance intervals, overhaul periods, or mandatory actions described in the applicable ICA.

(6) Engine Cooling

The engine design and construction must comply with § 33.21. In addition, if cooling is required to satisfy the safety analysis as described in special condition no. 17 of these special conditions, the cooling system monitoring features and usage must be documented and provided to the installer as part of the requirements in § 33.5.

(7) Engine Mounting Attachments and Structure

The engine mounting attachments and related engine structures must comply with § 33.23.

(8) Accessory Attachments

The engine must comply with § 33.25.

(9) Overspeed

(a) A rotor overspeed must not result in a burst, rotor growth, or damage that results in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions. Compliance with this paragraph must be shown by test, validated analysis, or a combination of both. Applicable assumed rotor speeds must be declared and justified.

(b) Rotors must possess sufficient strength with a margin to burst above

certified operating conditions and above failure conditions leading to rotor overspeed. The margin to burst must be shown by test, validated analysis, or a combination thereof.

(c) The engine must not exceed the rotor speed operational limitations that could affect rotor structural integrity.

(10) Engine Control Systems

(a) *Applicability.* The requirements of this special condition apply to any system or device that is part of the engine type design that controls, limits, monitors, or protects engine operation, and is necessary for the continued airworthiness of the engine.

(b) *Engine control.* The engine control system must ensure that the engine does not experience any unacceptable operating characteristics or exceed its operating limits, including in failure conditions where the fault or failure results in a change from one control mode to another, from one channel to another, or from the primary system to the back-up system, if applicable.

(c) *Design Assurance.* The software and complex electronic hardware, including programmable logic devices, must be—

(1) Designed and developed using a structured and systematic approach that provides a level of assurance for the logic commensurate with the hazard associated with the failure or malfunction of the systems in which the devices are located; and

(2) Substantiated by a verification methodology acceptable to the Administrator.

(d) *Validation.* All functional aspects of the control system must be substantiated by test, analysis, or a combination thereof, to show that the engine control system performs the intended functions throughout the declared operational envelope.

(e) *Environmental Limits.* Environmental limits that cannot be adequately substantiated by endurance demonstration, validated analysis, or a combination thereof must be demonstrated by the system and component tests in special condition no. 27 of these special conditions.

(f) *Engine control system failures.* The engine control system must—

(1) Have a maximum rate of loss of power control (LOPC) that is suitable for the intended aircraft application. The estimated LOPC rate must be documented and provided to the installer as part of the requirements in § 33.5;

(2) When in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events;

(3) Not have any single failure that results in hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions; and

(4) Ensure failures or malfunctions that lead to local events in the aircraft do not result in hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, due to engine control system failures or malfunctions.

(g) *System safety assessment.* The applicant must perform a system safety assessment. This assessment must identify faults or failures that affect normal operation, together with the predicted frequency of occurrence of these faults or failures. The intended aircraft application must be taken into account to assure that the assessment of the engine control system safety is valid. The rates of hazardous and major faults must be documented and provided to the installer as part of the requirements in § 33.5.

(h) *Protection systems.* The engine control devices and systems' design and function, together with engine instruments, operating instructions, and maintenance instructions, must ensure that engine operating limits that can lead to a hazard will not be exceeded in service.

(i) *Aircraft supplied data.* Any single failure leading to loss, interruption, or corruption of aircraft-supplied data (other than power-command signals from the aircraft), or aircraft-supplied data shared between engine systems within a single engine or between fully independent engine systems, must—

(1) Not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions, for any engine installed on the aircraft; and

(2) Be able to be detected and accommodated by the control system.

(j) *Engine control system electrical power.*

(1) The engine control system must be designed such that the loss, malfunction, or interruption of the control system electrical power source will not result in a hazardous engine effect, unacceptable transmission of erroneous data, or continued engine operation in the absence of the control function. Hazardous engine effects are defined in special condition no. 17(d)(2) of these special conditions. The engine control system must be capable of resuming normal operation when aircraft-supplied power returns to within the declared limits.

(2) The applicant must identify, document, and provide to the installer as part of the requirements in § 33.5, the characteristics of any electrical power supplied from the aircraft to the engine control system, including transient and steady-state voltage limits, and any other characteristics necessary for safe operation of the engine.

(11) Instrument Connection

The applicant must comply with § 33.29(a), (e), and (g).

(a) In addition, as part of the system safety assessment of special condition nos. 10(g) and 33(h) of these special conditions, the applicant must assess the possibility and subsequent effect of incorrect fit of instruments, sensors, or connectors. Where practicable, the applicant must take design precautions to prevent incorrect configuration of the system.

(b) The applicant must provide instrumentation enabling the flight crew to monitor the functioning of the engine cooling system unless evidence shows that:

(1) Other existing instrumentation provides adequate warning of failure or impending failure;

(2) Failure of the cooling system would not lead to hazardous engine effects before detection; or

(3) The probability of failure of the cooling system is extremely remote.

(12) Stress Analysis

(a) A mechanical and thermal stress analysis, as well as an analysis of the stress caused by electromagnetic forces, must show a sufficient design margin to prevent unacceptable operating characteristics and hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions.

(b) Maximum stresses in the engine must be determined by test, validated analysis, or a combination thereof, and must be shown not to exceed minimum material properties.

(13) Critical and Life-Limited Parts

(a) The applicant must show, by a safety analysis or means acceptable to the Administrator, whether rotating or moving components, bearings, shafts, static parts, and non-redundant mount components should be classified, designed, manufactured, and managed throughout their service life as critical or life-limited parts.

(1) Critical part means a part that must meet prescribed integrity specifications to avoid its primary failure, which is likely to result in a hazardous engine effect as defined in special condition no. 17(d)(2) of these special conditions.

(2) Life-limited parts may include but are not limited to a rotor or major

structural static part, the failure of which can result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions, due to a low-cycle fatigue (LCF) mechanism. A life limit is an operational limitation that specifies the maximum allowable number of flight cycles that a part can endure before the applicant must remove it from the engine.

(b) In establishing the integrity of each critical part or life-limited part, the applicant must provide to the Administrator the following three plans for approval:

(1) an engineering plan, as defined in § 33.70(a);

(2) a manufacturing plan, as defined in § 33.70(b); and

(3) a service-management plan, as defined in § 33.70(c).

(14) Lubrication System

(a) The lubrication system must be designed and constructed to function properly between scheduled maintenance intervals in all flight attitudes and atmospheric conditions in which the engine is expected to operate.

(b) The lubrication system must be designed to prevent contamination of the engine bearings and lubrication system components.

(c) The applicant must demonstrate by test, validated analysis, or a combination thereof, the unique lubrication attributes and functional capability of (a) and (b).

(15) Power Response

(a) The design and construction of the engine, including its control system, must enable an increase—

(1) From the minimum power setting to the highest rated power without detrimental engine effects;

(2) From the minimum obtainable power while in-flight and while on the ground to the highest rated power within a time interval determined to be appropriate for the intended aircraft application; and

(3) From the minimum torque to the highest rated torque without detrimental engine effects in the intended aircraft application.

(b) The results of (a)(1), (a)(2), and (a)(3) of this special condition must be documented and provided to the installer as part of the requirements in § 33.5.

(16) Continued Rotation

If the design allows any of the engine main rotating systems to continue to rotate after the engine is shut down while in-flight, this continued rotation must not result in any hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions.

(17) Safety Analysis

(a) The applicant must comply with § 33.75(a)(1) and (a)(2) using the failure definitions in special condition no. 17(d) of these special conditions.

(b) The primary failure of certain single elements cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous engine effects, then compliance may be shown by reliance on the prescribed integrity requirements of § 33.15 and special condition nos. 9 and 13 of these special conditions, as applicable. These instances must be stated in the safety analysis.

(c) The applicant must comply with § 33.75(d) and (e) using the failure definitions in special condition no. 17(d) of these special conditions, and the ICA in § 33.4.

(d) Unless otherwise approved by the Administrator, the following definitions apply to the engine effects when showing compliance with this condition:

(1) A minor engine effect does not prohibit the engine from performing its intended functions in a manner consistent with § 33.28(b)(1)(i), (b)(1)(iii), and (b)(1)(iv), and the engine complies with the operability requirements of special condition no. 15 and special condition no. 25 of these special conditions, as appropriate.

(2) The engine effects in § 33.75(g)(2) are hazardous engine effects with the addition of:

(i) Electrocution of the crew, passengers, operators, maintainers, or others; and

(ii) Blockage of cooling systems that could cause the engine effects described in § 33.75(g)(2) and special condition 17(d)(2)(i) of these special conditions.

(3) Any other engine effect is a major engine effect.

(e) The intended aircraft application must be taken into account when performing the safety analysis.

(f) The results of the safety analysis, and the assumptions about the aircraft application used in the safety analysis, must be documented and provided to the installer as part of the requirements in § 33.5.

(18) Ingestion

(a) Rain, ice, and hail ingestion must not result in an abnormal operation such as shutdown, power loss, erratic operation, or power oscillations throughout the engine operating range.

(b) Ingestion from other likely sources (birds, induction system ice, foreign objects—ice slabs) must not result in hazardous engine effects defined by special condition no. 17(d)(2) of these special conditions, or unacceptable power loss.

(c) If the design of the engine relies on features, attachments, or systems that the installer may supply, for the prevention of unacceptable power loss or hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, following potential ingestion, then the features, attachments, or systems must be documented and provided to the installer as part of the requirements in § 33.5.

(19) Liquid and Gas Systems

(a) Each system used for lubrication or cooling of engine components must be designed and constructed to function properly in all flight attitudes and atmospheric conditions in which the engine is expected to operate.

(b) If a system used for lubrication or cooling of engine components is not self-contained, the interfaces to that system must be defined, documented and provided to the installer as part of the requirements in § 33.5.

(c) The applicant must establish by test, validated analysis, or a combination of both that all static parts subject to significant pressure loads will not:

(1) Exhibit permanent distortion beyond serviceable limits, or exhibit leakage that could create a hazardous condition when subjected to normal and maximum working pressure with margin;

(2) Exhibit fracture or burst when subjected to the greater of maximum possible pressures with margin.

(d) Compliance with special condition no. 19(c) of these special conditions must take into account:

(1) The operating temperature of the part;

(2) Any other significant static loads in addition to pressure loads;

(3) Minimum properties representative of both the material and the processes used in the construction of the part; and

(4) Any adverse physical geometry conditions allowed by the type design, such as minimum material and minimum radii.

(e) Approved coolants and lubricants must be listed, documented, and provided to the installer as part of the requirements in § 33.5.

(20) Vibration Demonstration

(a) The engine must be designed and constructed to function throughout its normal operating range of rotor speeds and engine output power, including

defined exceedances, without inducing excessive stress in any of the engine parts because of vibration and without imparting excessive vibration forces to the aircraft structure.

(b) Each engine design must undergo a vibration survey to establish that the vibration characteristics of those components subject to induced vibration are acceptable throughout the declared flight envelope and engine operating range for the specific installation configuration. The possible sources of the induced vibration that the survey must assess are mechanical, aerodynamic, acoustical, internally induced electromagnetic, installation induced effects that can affect the engine vibration characteristics, and likely environmental effects. This survey must be shown by test, validated analysis, or a combination thereof.

(21) Overtorque

When approval is sought for a transient maximum engine overtorque, the applicant must demonstrate by test, validated analysis, or a combination thereof, that the engine can continue operation after operating at the maximum engine overtorque condition without maintenance action. Upon conclusion of overtorque tests conducted to show compliance with this special condition, or any other tests that are conducted in combination with the overtorque test, each engine part or individual groups of components must meet the requirements of special condition no. 29 of these special conditions.

(22) Calibration Assurance

Each engine must be subjected to calibration tests to establish its power characteristics, and the conditions both before and after the endurance and durability demonstrations specified in special conditions nos. 23 and 26 of these special conditions.

(23) Endurance Demonstration

The applicant must subject the engine to an endurance demonstration, acceptable to the Administrator, to demonstrate the engine's limit capabilities. The endurance demonstration must include increases and decreases of the engine's power settings, energy regeneration, and dwellings at the power settings and energy regeneration for sufficient durations that produce the extreme physical conditions the engine experiences at rated performance levels, operational limits, and at any other conditions or power settings, including energy regeneration that are required to verify the limit capabilities of the engine.

(24) Temperature Limit

The engine design must demonstrate its capability to endure operation at its temperature limits plus an acceptable margin. The applicant must quantify and justify the margin to the Administrator. The demonstration must be repeated for all declared duty cycles and ratings, and operating environments, which would impact temperature limits.

(25) Operation Demonstration

The engine design must demonstrate safe operating characteristics, including but not limited to power cycling, starting, acceleration, and overspeeding throughout its declared flight envelope and operating range. The declared engine operational characteristics must account for installation loads and effects.

(26) Durability Demonstration

The engine must be subjected to a durability demonstration to show that each part of the engine has been designed and constructed to minimize any unsafe condition of the system between overhaul periods, or between engine replacement intervals if the overhaul is not defined. This test must simulate the conditions in which the engine is expected to operate in service, including typical start-stop cycles, to establish when the initial maintenance is required.

(27) System and Component Tests

The applicant must show that systems and components that cannot be adequately substantiated in accordance with the endurance demonstration or other demonstrations will perform their intended functions in all declared environmental and operating conditions.

(28) Rotor Locking Demonstration

If shaft rotation is prevented by locking the rotor(s), the engine must demonstrate:

(a) Reliable rotor locking performance;

(b) Reliable rotor unlocking performance; and

(c) That no hazardous engine effects, as specified in special condition no. 17(d)(2) of these special conditions, will occur.

(29) Teardown Inspection

(a) Teardown evaluation.

(1) After the endurance and durability demonstrations have been completed, the engine must be completely disassembled. Each engine component and lubricant must be eligible for continued operation in accordance with the information submitted for showing compliance with § 33.4.

(2) Each engine component, having an adjustment setting and a functioning characteristic that can be established independent of installation on or in the engine, must retain each setting and functioning characteristic within the established and recorded limits at the beginning of the endurance and durability demonstrations.

(b) Non-Teardown evaluation. If a teardown cannot be performed for all engine components in a non-destructive manner, then the inspection or replacement intervals for these components and lubricants must be established based on the endurance and durability demonstrations and must be documented in the ICA in accordance with § 33.4.

(30) Containment

The engine must be designed and constructed to protect against likely hazards from rotating components as follows—

(a) The design of the stator case surrounding rotating components must provide for the containment of the rotating components in the event of failure, unless the applicant shows that the margin to rotor burst precludes the possibility of a rotor burst.

(b) If the margin to burst shows that the stator case must have containment features in the event of failure, then the stator case must provide for the containment of the failed rotating components. The applicant must define by test, validated analysis, or a combination thereof, and document and provide to the installer as part of the requirements in § 33.5, the energy level, trajectory, and size of fragments released from damage caused by the main-rotor failure, and that pass forward or aft of the surrounding stator case.

(32) General Conduct of Tests

(a) Maintenance of the engine may be made during the tests in accordance with the service and maintenance instructions submitted in compliance with § 33.4.

(b) The applicant must subject the engine or its parts to any additional tests that the Administrator finds necessary if—

(1) The frequency of engine service is excessive;

(2) The number of stops due to engine malfunction is excessive;

(3) Major engine repairs are needed; or

(4) Replacement of an engine part is found necessary during the tests, or due to the teardown inspection findings.

(c) Upon completion of all demonstrations and testing specified in these special conditions, the engine and its components must be—

(1) Within serviceable limits;

(2) Safe for continued operation; and

(3) Capable of operating at declared ratings while remaining within limits.

(33) Engine Electrical Systems

(a) *Applicability.* Any system or device that provides, uses, conditions, or distributes electrical power, and is part of the engine type design, must provide for the continued airworthiness of the engine, and must maintain electric engine ratings.

(b) *Electrical systems.* The electrical system must ensure the safe generation and transmission of power, and electrical load shedding if required, and that the engine does not experience any unacceptable operating characteristics or exceed its operating limits.

(c) *Electrical power distribution.*

(1) The engine electrical power distribution system must be designed to provide the safe transfer of electrical energy throughout the powerplant. The system must be designed to provide electrical power so that the loss, malfunction, or interruption of the electrical power source will not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions.

(2) The system must be designed and maintained to withstand normal and abnormal conditions during all ground and flight operations.

(3) The system must provide mechanical or automatic means of isolating a faulted electrical energy generation or storage device from leading to hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, or detrimental effects in the intended aircraft application.

(d) *Protection systems.* The engine electrical system must be designed such that the loss, malfunction, interruption of the electrical power source, or power conditions that exceed design limits, will not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions.

(e) *Electrical power characteristics.* The applicant must identify, declare, document, and provide to the installer as part of the requirements in § 33.5, the characteristics of any electrical power supplied from—

(1) the aircraft to the engine electrical system, for starting and operating the engine, including transient and steady-state voltage limits, and

(2) the engine to the aircraft via energy regeneration, and any other characteristics necessary for safe operation of the engine.

(f) *Environmental limits.* Environmental limits that cannot adequately be substantiated by endurance demonstration, validated analysis, or a combination thereof must be demonstrated by the system and component tests in special condition no. 27 of these special conditions.

(g) *Electrical system failures.* The engine electrical system must—

(1) Have a maximum rate of loss of power control (LOPC) that is suitable for the intended aircraft application;

(2) When in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events;

(3) Not have any single failure that results in hazardous engine effects; and

(4) Ensure failures or malfunctions that lead to local events in the intended aircraft application do not result in hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, due to electrical system failures or malfunctions.

(h) *System safety assessment.* The applicant must perform a system safety assessment. This assessment must identify faults or failures that affect normal operation, together with the predicted frequency of occurrence of these faults or failures. The intended aircraft application must be taken into account to assure the assessment of the engine system safety is valid. The rates of hazardous and major faults must be declared, documented, and provided to the installer as part of the requirements in § 33.5.

Issued in Kansas City, Missouri, on December 10, 2024.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–29490 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No.: FAA–2024–0176; Amdt. No. 129–55]

RIN 2120–AL93

Foreign Air Operator Certificates Issued by a Regional Safety Oversight Organization

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This amendment will allow the FAA to review and, if acceptable to the Administrator, recognize as valid air operator certificates issued by a Regional Safety Oversight Organization to foreign air carriers when the State of the Operator is a member of that Regional Safety Oversight Organization, for purposes of evaluating foreign applicants for operating specifications.

DATES: Effective January 16, 2025.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tim Shaver, International Program Division/ International Operations Branch, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone (202) 267–1704; email *tim.shaver@faa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority for This Rulemaking

The FAA's authority to issue rules on 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 FAA's authority.

This rulemaking is issued under the authority described in subtitle VII, part A, subpart III, section 44701(a)(5). Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary to ensure safety in air commerce. This regulation is within the scope of that authority. Amending the regulations for applications for operations specifications under part 129 submitted by foreign air carriers or foreign persons, and the related standards for denial of

such an application for operations specifications authorizations, improves the FAA's ability to manage these authorizations. These operations specifications are issued to foreign air carriers operating within the United States and to foreign air carriers or foreign persons conducting operations of U.S.-registered aircraft solely outside the United States.

II. Executive Summary

A. Purpose of the Regulatory Action

Prior to this action, FAA regulations required that foreign applicants for operations specifications must hold a valid air operator certificate (AOC) issued by the State of the Operator. See 14 CFR 129.7(c)(5). Requiring the operator to hold an AOC issued by the State of the Operator is consistent with the standard in Annex 6, Volume 1 to the Convention on International Civil Aviation, which directs that an operator shall not engage in commercial transport operations unless in possession of a valid AOC issued by the State of the Operator.[1]

Some International Civil Aviation Organization (ICAO) Contracting States have joined together to form Regional Safety Oversight Organizations (RSOO). These organizations may provide a uniform regulatory structure for safety oversight and provide technical assistance and the execution of safety oversight functions for their member States. RSOOs have been established in many parts of the world. These organizations may be formed based on a variety of differing arrangements among member States. The institutional structures of these organizations range from highly formalized intergovernmental organizations established on the basis of formal legal agreements to less formalized organizations established under the ICAO Cooperative Development of Operational Safety and Continuing Airworthiness Program.[2]

As stated in ICAO guidance, ''under the Chicago Convention, only the State has responsibility for safety oversight, and this responsibility may not be transferred.'' [3] The guidance further states that, although the State may delegate specific safety oversight tasks and functions to an RSOO, such as inspections for the certification of an operator, the State must still retain the minimum capability required to carry out its responsibilities under the Chicago Convention. States must always be able to properly and effectively monitor the safety oversight functions delegated to the RSOO.[4]

States participating in RSOOs may delegate or transfer various functions or tasks to these organizations as stipulated in the RSOO's formation documentation. As provided in ICAO guidance, one of the functions member States may delegate or transfer to a highly formalized and more fully resourced RSOO is the issuance of AOCs for the State of the Operator.[5]

In those instances where an AOC is issued by an RSOO rather than the member State, this regulation change now allows the FAA to review supporting documentation for applications for foreign air carrier operation specifications and, if acceptable to the Administrator, recognize as valid (*i.e.,* ensure that it conforms to ICAO standards) AOCs issued by an RSOO to foreign air carriers if the State of the Operator is a member State of that RSOO.

B. Changes Made in This Final Rule

This rule amends the regulations for applications by foreign air carriers and foreign persons for operations specifications under 14 CFR part 129 and amends regulations for the denial of applications for operations specifications. This rule amends three sections in subpart A of part 129: § 129.1, Applicability and definitions; § 129.7, Application, issuance, or denial of operations specifications; and § 129.9, Contents of operations specifications. Based on the comments received in response to the notice of proposed rulemaking, the FAA has revised the rule language to clarify the requirements and remove any ambiguity regarding the intent of the amendments. See section III.C. of this preamble.

III. Background

A. Summary of the NPRM

On May 22, 2024, the FAA published the notice of proposed rulemaking (NPRM) titled ''Foreign Air Operator Certificates issued by a Regional Safety Oversight Organization'' (89 FR 44935). The FAA also posted draft guidance material for the proposal, ''FAA Order 8900.1, Volume 12, Chapter 2, Section 2,'' for comment in the NPRM docket. The NPRM proposed to amend the regulations for applications by foreign air carriers and foreign persons for operations specifications under 14 CFR part 129 and the regulations for the denial of applications for operations specifications.

B. General Overview of Comments

The FAA received four comments.[6] The agency received comments from one individual and three associations representing industry and labor constituencies. One of the associations supported the rule. Two of the associations opposed the rule, as discussed more fully in section IV. The FAA received comments on the proposal that addressed: support for the rule change; International Aviation Safety Assessments (IASA) for RSOOs; the number of IASAs needed; legal basis concerns; validation of Safety Management Systems (SMS) in IASAs for RSOO member States; and safety concerns.

In addition, on September 17, 2024, after the comment period closed, representatives of the Department of Transportation, Department of State, Department of Commerce, and Federal Aviation Administration met with representatives from Directorate-General Mobility and Transport (DG MOVE), European Aviation Safety Agency (EASA), and European Union (EU) Member States for a special meeting of the Joint Committee established by the U.S.—EU Air Transport Agreement. During the meeting, DG MOVE raised concerns with this rulemaking effort. A summary of the meeting has been posted to the docket for this rulemaking.

C. Differences Between the NPRM and the Final Rule

In the NPRM, the FAA proposed to establish new definitions in 14 CFR 129.1 for ''Regional Safety Oversight Organization'' and ''State of the Operator.'' As discussed more fully later in the preamble, the final rule revises the RSOO definition to clarify the relationship between a member State and an RSOO and the transfer of responsibilities between the entities to fully address the Air Line Pilots Association's (ALPA's) comment, which expressed concerns about a ''legal fiction.'' The FAA is finalizing the

[1] Annex 6, Volume 1, 4.2.1.1.

[2] Information for ICAO Cooperative Development of Operational Safety and Continuing Airworthiness Program (COSCAP) is contained in the ICAO Safety Oversight Manual, Part B, The Establishment and Management of a Regional Safety Oversight Organization, Doc. 9734, 2011.

[3] *Safety Oversight Manual, Part B, The Establishment and Management of a Regional Safety Oversight Organization,* Doc. 9734, 2011.

[4] Id. at 2.1.8.

[5] See id. at 4.1.10, which indicates that issuance of certificates may be delegated but states that ''the day-to-day surveillance of service providers remains the responsibility of the civil aviation authority (CAA) of member States.'' In addition, see Sections IV.D, IV.F., and V.C. for discussion of the FAA's intent to file a difference as the standard under the Chicago Convention directs issuance of an AOC by the State of the Operator.

[6] One comment concerning Boeing employment practices was outside the scope of this rulemaking.

definition of ''State of the Operator'' as proposed.

As proposed in the NPRM, the FAA is amending § 129.7 to accommodate the recognition as valid by the FAA of AOCs issued by an RSOO on behalf of the State of the Operator. Based on the comments received, the FAA is revising § 129.7(c)(5) in the final rule to eliminate the term ''on behalf of'' to clarify the relationship between, and responsibilities of, the State of the Operator and an RSOO. This final rule also clarifies the FAA will accept an AOC only ''*if* acceptable to the Administrator,'' whereas the NPRM limited this to the RSOO-issued AOCs and used the phrase ''*as* acceptable to the Administrator'' (emphasis added). The final rule adds ''if acceptable to the Administrator'' to § 129.7(c)(5) and adds paragraphs (c)(5)(i) and (ii) to stipulate the FAA may accept an AOC issued by (i) the State of the Operator, or (ii) an RSOO if the State of the Operator is a member State of that RSOO.

In the NPRM, the FAA proposed an additional amendment to § 129.7(d) to align the conditions for the FAA's denial of an application for operations specifications with the conditions for eligibility for issuance of operations specifications. This amendment is adopted as proposed.

The FAA also proposed to amend § 129.9(a)(3) to reflect the possible acceptance and recognition as valid by the FAA of AOCs issued by an RSOO on behalf of the State of the Operator. The final rule simplifies the regulatory text in § 129.9(a)(3) and (b)(3) by removing the specification that an AOC may be issued by the State of the Operator or an RSOO. The FAA determined that the regulatory text in § 129.7(c)(5) establishes the basis for the FAA to accept a valid AOC, if acceptable to the Administrator, issued by (i) the State of the Operator; or (ii) an RSOO if the State of the Operator is a member State of that RSOO. Repeating this language in § 129.9 is unnecessary and redundant.

D. Related Actions

Section 369 of the FAA Reauthorization Act of 2024 amended chapter 447 of title 49 U.S.C. by adding section 44747, titled ''Aviation safety oversight measures carried out by foreign countries.'' [7] This amendment codified the FAA's IASA program. The IASA program is the means by which the FAA determines whether another country's oversight of its air carriers that (1) operate, or seek to operate, services to/from the United States using their own aircraft and crews, or (2) seek to display the code of a U.S. air carrier on any services, complies with safety standards established by ICAO. The published IASA results of a country's placement in Category 1 or Category 2 is the notification to the U.S. traveling public as to whether a foreign air carrier's State civil aviation authority (CAA) meets ICAO safety standards. A Category 1 rating indicates that the CAA meets ICAO safety standards for these operations, and a Category 2 rating indicates that the CAA does not meet ICAO safety standards.

On August 16, 2024, the FAA published a notice in the **Federal Register** (89 FR 66546) announcing the agency's suspension of policy changes to the IASA program that had been announced in a September 28, 2022,[8] Policy Statement, and a second notice in the **Federal Register** on the same day inviting public comments on proposed changes to the FAA IASA program policy (89 FR 66645). The comment period for the proposed policy closed on September 16, 2024, and the FAA is currently considering the comments received.

IV. Discussion of Comments and the Final Rule

A. Support for the Rule Change

The National Business Aviation Association (NBAA) expressed support for the FAA's proposed changes to part 129 that would recognize AOCs issued by an RSOO. NBAA cited as an example the EASA, which has developed competency across a growing range of aviation capabilities, and with the further growth of mutual recognition of capabilities between FAA and EASA, the acceptance of certificates issued by EASA will greatly enhance process efficiency and approval consistency for European commercial operators seeking to access the United States. NBAA also stated that RSOOs meeting the requirements set forth in the proposed changes will benefit from this recognition along with commercial operators.

NBAA stated that as regulators seek to improve safety oversight efficiency and reduce process redundancies for operators and government agencies, efforts like this rulemaking will allow governments and industry to more efficiently deploy safety resources to operate in a global environment.

Allied Pilots Association (APA), while not supporting the rulemaking, acknowledged in its comment that it recognizes the vital importance of collaboration and cooperation when it comes to global aviation safety. As a result, APA indicated it understands the value that RSOOs can provide in promoting aviation safety oversight and stated APA's position on the proposed rule change should not be viewed as a criticism of RSOOs in general or the desire for ICAO member States to collaborate in the name of aviation safety.

The FAA acknowledges the support of the rulemaking expressed by NBAA and the overall support of RSOOs and their contribution to safety oversight expressed by APA.

B. International Aviation Safety Assessments (IASA) for RSOOs

ALPA commented the FAA must conduct a detailed inquiry of the level of participation of a State's CAA in the activities of the RSOO and all associated safety activities but stated the NPRM is unclear on whether the FAA would conduct an IASA of the RSOO itself.

ALPA stated it is unclear whether any RSOO is currently equipped with the correct process, procedure, personnel, and financial stability to serve in the role as a permanent regulatory oversight agency ''on behalf of'' the State of the Operator. ALPA believed the FAA should ensure that the regional oversight entity has sufficient ''boots on the ground'' (auditors and line inspectors with the right skillsets and training, funded by adequate resources, and backed by management with the requisite will to ensure compliance) to be fit for the purpose of satisfying each of those States' treaty obligations.

ALPA contended the FAA could determine all eleven of the ICAO-recognized RSOOs to be IASA Category 1, by default, which would generate unacceptable safety risks.

ALPA asserted the FAA must first complete an IASA for each RSOO before approving or renewing any new AOC from an RSOO. Then, once a specific AOC application is received by the FAA that invokes an RSOO/State AOC arrangement, ALPA believed the FAA should conduct a separate IASA review of the RSOO/State plan for AOC oversight of the air carriers applying to operate under part 129.

Although APA did not specifically suggest the FAA conduct IASAs on RSOOs, APA stated that due to the varying levels of formality in structure among the currently existing RSOOs, each AOC issued by an RSOO would have to be reviewed and analyzed for validity and appropriateness before being recognized by the Administrator. APA asserted this would require the Administrator to review and understand the approval and issuance process of

[7] Public Law 118–63 (May 16, 2024).

[8] 87 FR 58725.

each RSOO to be able to determine if the applicant's operator certificate should be recognized as valid. As a result, APA believed the proposal makes the application review process more cumbersome and complex.

The FAA generally disagrees with the concern expressed by APA about this rule change, adding complexity and additional burden to the FAA's IASA program. However, the FAA agrees with APA that each AOC issued by an RSOO must be reviewed for validity before being recognized by the Administrator.

The responsibility for ensuring compliance with international standards established under the Chicago Convention falls to the member States as parties to the Convention. As such, the FAA IASA program assesses the CAA for the State of the Operator. Specifically, the IASA program assesses and determines the State of the Operator's compliance with the standards in ICAO Annex 1 (Personnel Licensing), Annex 6—Part 1 and Part 3 (Operation of Aircraft), and Annex 8 (Airworthiness of Aircraft). The FAA reviews the CAA's compliance by assessing ICAO's eight critical elements of effective aviation safety oversight in the ICAO Document 9734, Safety Oversight Manual. Those eight critical elements include:

1. Primary aviation legislation
2. Specific operating regulations
3. State civil aviation system and safety oversight functions
4. Technical personnel qualification and training
5. Technical guidance, tools, and the provision of safety-critical information
6. Licensing, certification, authorization, and approval obligations
7. Surveillance obligations
8. Resolution of safety concerns

When a CAA, as a member of an RSOO, transfers a task or function to the RSOO, the FAA expects the transfer to be documented in an agreement, treaty, or informal written record of the parties' understanding that is available for review by the Administrator.[9] This includes filings with ICAO outlining the arrangement between the RSOO and its member States.

While the State of the Operator may transfer responsibility for certain tasks and functions to an RSOO, it cannot transfer its responsibility under the Chicago Convention. The FAA will continue to assess the State of the Operator as the responsible party for compliance with the ICAO standards. This assessment will ensure the State maintains the responsibility for the issuance and continued oversight of the AOC by the RSOO. When the State transfers the function of issuance of an AOC to an RSOO, the transfer documentation established by the State and the RSOO will be used by the FAA to determine which organization has responsibility for each task and function associated with issuance of an AOC. The FAA will use existing IASA procedures to assess the State to ensure the correct process, procedure, personnel, and financial stability necessary to accomplish transferred tasks or functions meet ICAO standards. The FAA does not believe the nuance of determining if the transferred task or functions is accomplished by the RSOO or retained by the State of the Operator adds a significant level of complexity to the process.

As such, the FAA does not anticipate an IASA on an RSOO will be required to determine whether the CAA complies with the ICAO standards. For AOCs issued by the RSOO, however, the FAA will review the formation documentation for each RSOO and each RSOO-issued AOC for validity and consistency with ICAO standards. In the case of AOC issuance, the specific requirements that must be validated are only a small subset of ICAO standards. In most cases, the FAA expects that RSOO-issued AOCs will have been issued for States that have been assessed by the FAA, already resulting in an IASA Category 1 rating. Therefore, with the transfer of functions and duties to an RSOO, the FAA would conduct a more focused evaluation of the specific requirements associated with AOC issuance for the country in question. As a party to the Chicago Convention, the State remains the accountable organization to be assessed by the FAA under an IASA, and the RSOO is expected to participate in the IASA assessment as an observer for transferred functions.

For all RSOO member States that have not had an IASA conducted by the FAA previously, an assessment of compliance with the ICAO standards for issuance of an AOC (including any functions or tasks transferred to an RSOO) will be done as part of the initial IASA for that State. An initial IASA of the State of the Operator must be completed before the FAA may accept an RSOO-issued AOC for that State. The RSOO may observe and support the State during the IASA to provide information about the RSOO's roles and responsibilities for the tasks and functions as transferred by the State.

C. Increased Number of IASAs

ALPA stated that the FAA has incorrectly assumed that it will not need to increase the number of IASA assessments. ALPA contended the FAA will need to assess each RSOO at issue, which has never been assessed before. ALPA stated the FAA will need to conduct specific reviews of the national CAAs to which an RSOO may delegate certain functions. ALPA was concerned that if more assessments are needed, the FAA ''will simply subtract one'' from its average number of five IASAs typically completed per year. ALPA contended that doing fewer assessments, not more, does not represent an equivalent level of safety and that a foreign entity's desire for an assessment must not overwhelm the FAA's obligation to determine what is in the U.S. public interest.

The FAA understands ALPA's concern but does not expect the number of IASA assessments to increase in the near term, given the FAA is aware of only one RSOO issuing AOCs for member States, to date. The FAA also does not expect a decrease in the number of IASAs conducted on average, historically.

As indicated previously, the FAA will continue to conduct IASAs for States that seek to initiate service to the United States, or for those States that have been identified as requiring a reassessment based on risk factors, whether the operator's AOC is issued by the State of the Operator or an RSOO. During an initial IASA evaluation of the State, the transferred functions will be assessed by the FAA to determine compliance with ICAO standards.

If a State previously assessed by the FAA as IASA Category 1 subsequently transfers the function of AOC issuance to an RSOO, the FAA's regulatory process for AOC validation includes ensuring the ICAO standards and eight critical elements for those standards are still being met for that specific function without conducting a full IASA. If the FAA's evaluation of the transferred function cannot establish ICAO compliance using the established validation process, the AOC will not be accepted by the FAA. The FAA does not anticipate conducting a complete IASA reassessment solely based on transfer of the function of issuance of an AOC to an RSOO. The lack of confirmation of compliance with ICAO AOC standards due to the transfer of the function to an RSOO would, however, be included as a risk consideration when the FAA is reviewing a State for IASA reassessment.

[9] See ICAO Doc. 9734, Part B, 3.3.4, which states ''[w]hat is the most important consideration here is that the legal status of the RSOO, the scope of its functions and the extent of delegated legal authority are clearly determined and stipulated in the agreement document.''

The FAA uses a risk analysis process to identify IASA Category 1 countries for reassessment. The risk analysis is performed at least annually and whenever new safety information is obtained on each country on the IASA Category Rating list to determine countries of highest risk to the U.S. National Airspace System (NAS) and the U.S. traveling public. The risk analysis was developed by FAA experts and is comprised of individual risk elements and grouped into the following five major IASA risk categories:

(1) Department of Transportation Economic Authority—New or existing U.S. DOT economic authority; own-metal U.S. service under part 129; new or current codeshare involving display of U.S. air carrier code on foreign operator flights; and any U.S. DOT administrative emphasis items and initiatives.

(2) Governance and Safety Culture—Areas of interest include: contracting of safety oversight functions; carrier wet lease to airlines of other countries; safety items identified by the CAA remain unresolved or not addressed; complaints received by FAA from other CAAs, operators, manufacturers, and the traveling public.

(3) IASA Information—Time passed since the last IASA, and other factors that indicate the Category 1 rating may no longer be valid.

(4) ICAO Requirements—Risk concerns include: negative ICAO Universal Safety Oversight Audit Program (USOAP) findings indicating noncompliance with one or more of the eight critical elements of safety oversight; ICAO reports indicating noncompliance with Standards and Recommended Practices (SARPs); inaction with respect to ICAO action plans; ICAO USOAP information over two years old thus limiting its value.

(5) FAA Information—FAA has safety concerns about the oversight provided by the CAA, which include the areas of: FAA and foreign ramp inspections; safety-related complaints about carrier(s) from other CAAs; active technical assistance activities; compliance issues are present in FAA certificated or approved entities in the country; Congressional inquiries; and existing bilateral agreement implementation procedures.

The risk associated with the FAA's inability to validate ICAO compliance due to a transfer of tasks or functions would be included in the ICAO requirements category of risks.

The FAA mitigates identified State safety oversight risks by placing all carriers from that State, authorized to operate to the United States, under heightened surveillance until the IASA reassessment is completed.[10] In extreme cases where safety or oversight risks cannot be mitigated, the FAA has regulatory authority to remove the authorization from any or all carriers authorized to operate from that State.[11]

D. Legal Basis Concerns

ALPA and APA expressed concerns about the legal basis and compliance with ICAO standards associated with the proposed rulemaking. ALPA stated the proposal seems contradictory. ALPA commented that on one hand, the FAA's proposal seeks to overcome the Chicago Convention's clear instruction by stating that the regional oversight entity would be acting ''on behalf of'' a State and thus would purportedly comply with the treaty. ALPA contended that as a result, the proposal would hold the State to account, even though the State would designate the regional entity as the responsible authority. ALPA stated, on the other hand, the proposal recognizes the regional entity would be responsible, and U.S. recognition of operating licenses would be at odds with U.S. obligations under the treaty, such that a ''difference'' would have to be filed by the United States with ICAO.

ALPA asserted the FAA's regulatory language ''on behalf of,'' as in ''on behalf of the State of the Operator,'' introduces ambiguity because the entity doing the acting (on behalf of) is the one with actual responsibility. ALPA commented that this ''legal fiction is to be a workaround from what ICAO admits being the role of the RSOO . . .''

ALPA commented that the Chicago Convention recognizes the value in a clear line of responsibility from a national government authority to an air carrier and that only States are deemed the valid issuers of such a license, in accordance with ICAO Guidance on RSOOs.[12] ALPA had significant concerns about how an RSOO's relationship with the State of the Operator will work in practice, including a concern that an RSOO often delegates responsibilities for AOC oversight back to the State of the Operator. ALPA urged the FAA to deem the RSOO, not the State of the Operator, to be ''ultimately responsible for the IASA'' assessment.

For an existing IASA Category 1 State, the FAA's assessment has already established the State complies with ICAO standards for the issuance of an AOC. The FAA Order 8900.1, volume 12, chapter 2, section 2 procedure for the evaluation of AOC issuance and subsequent transfer of the tasks and functions then focuses on ensuring all the required tasks and functions for AOC oversight are addressed, and the responsibility for each of those tasks or functions is clearly defined. The FAA procedure also ensures that there is evidence in the transfer documentation that covers the roles and responsibilities necessary for the continued compliance of the AOC holder with the ICAO AOC standards during the life cycle of the AOC. If the FAA cannot determine compliance, the AOC will not be accepted by the FAA until compliance with the required ICAO standards can be confirmed by the FAA.

To the extent that ALPA suggests that, to act in compliance with the Chicago Convention, an AOC may only be issued by the State of the Operator, the FAA disagrees. The Chicago Convention does not speak directly to the issuance of AOCs. Rather, there is a standard in Annex 6, Volume 1 that prohibits an operator from engaging in commercial air transport operations unless the operator possesses a valid AOC issued by the State of the Operator. While a member State must comply with its obligations under the Chicago Convention, Article 38 allows a State to file a difference with ICAO to acknowledge differences between the State's own practices and those standards established in the Annexes to the Convention. Consistent with the obligation to provide notice of a difference, the FAA will file a difference to 4.2.1.1 of Annex 6, Volume 1, acknowledging the FAA's acceptance of RSOO-issued AOCs when the Administrator determines they are acceptable (*i.e.,* issued in conformance with ICAO standards for AOCs).

To the extent the commenters suggest the characterization that an RSOO issues AOCs ''on behalf of'' a member state is in conflict with the FAA's determination that a difference must be filed, the FAA finds that the two concepts are not irreconcilable. However, the FAA has determined that certain clarifying changes, identified in

[10] The FAA notes that, in addition to the heightened surveillance, the FAA proposed changes to the IASA program in the **Federal Register** (89 FR 66645, August 16, 2024). In that NPRM, the FAA proposed to establish a Category 1* rating to be applied when the FAA has determined through the FAA risk assessment process that a Category 1 country should be reassessed based on identified risks of possible noncompliance. The comment period closed on September 16, 2024, and the FAA is considering the public comments and developing a final policy notice.

[11] See 14 CFR 129.11(b) and (g).

[12] See ICAO Doc. 9734, Part B, 7.5.12, which states that ''where a harmonized regulatory framework prevails in a region, the civil aviation authorities of member States will remain the sole authority for the issuance of licences and operator certificates, approval of aircraft maintenance organizations, approval of design and production organizations, and approval of training centres.''

the following discussion, should be made to the regulatory text in this final rule.

ICAO acknowledges in its guidance that existing RSOOs have taken a variety of forms, ranging from a relatively loose association of CAAs that have agreed to cooperate in the development and implementation of requirements and procedures, to an intergovernmental organization with regulatory and, to some extent, enforcement authority. According to ICAO, the form that an RSOO takes will primarily be determined by the needs of its members, the level of available resources, the scope of activities, the level of authority delegated by member States, and, in certain cases, the legislative framework already established by the group or community of States creating the RSOO.[13]

Given the varying frameworks that RSOOs may take, the FAA agrees that it is critical for States to maintain and demonstrate clear lines of responsibility [14] in order for the FAA to properly assess the acceptability of an AOC issued by an RSOO in place of the State of the Operator. The final rule enables FAA review of the RSOO and State of the Operator formation documentation to ensure the transferred tasks and functions associated with the issuance and continued surveillance of the AOC holder are clearly defined and that the ICAO standards for assessing the AOC applicant have been met. See definition of RSOO in § 129.1 of the final rule. This final rule further ensures the FAA review of all ICAO Standards related to AOC issuance that are assessed during an IASA.

The transferred function affected by this rulemaking, which the FAA has determined would necessitate filing a difference from ICAO standards, is limited to the transfer of responsibility for issuing the AOC from a member State to an RSOO. However, the FAA recognizes there could be significant variability between the responsibilities of RSOOs and which AOC issuance functions are transferred to them by member States. When a CAA transfers functions related to AOC issuance or the conduct of oversight-related tasks in conjunction with AOC issuance to an RSOO, the State of the Operator is still responsible for ensuring that the transferred functions continue to comply with ICAO standards. Therefore, the FAA disagrees with ALPA's assertion the FAA should hold the RSOO ultimately responsible for the IASA.

Nevertheless, the FAA agrees with ALPA that the language ''on behalf of'' included in the NPRM introduces unnecessary ambiguity and an apparent, though unintended, conflict with the FAA's position that a difference must be filed with ICAO as a result of this rulemaking.

Therefore, the FAA revised the text of the final rule in § 129.7 to remove this qualifier. This final rule also clarifies the FAA will only accept an AOC issued by the State of the Operator or an RSOO ''*if* acceptable to the Administrator'' (emphasis added). In addition, the FAA is making corresponding changes to the definition of RSOO in § 129.1 to reflect that authority may either be formally delegated between the member States and the RSOO or tasks and functions may be less formally transferred or assigned. The changes to §§ 129.1 and 129.7 are otherwise adopted as proposed.

As for the concerns about transfer of tasks and functions related to the issuance of an AOC from the State of the Operator to the RSOO and subsequent transfer of oversight-related tasks or functions pertaining to AOC issuance back to the State of the Operator, the FAA agrees these roles and responsibilities must be clearly defined, documented, and understood. The final rule ensures the FAA must review the documented transfer of all tasks and functions related to the issuance of an AOC from the State of the Operator to the RSOO.

Consistent with the FAA's proposal for accepting an AOC from an RSOO, the RSOO must meet the FAA's definition of RSOO in 14 CFR 129.1, which, as updated for this final rule, is an association or organization that comprises a group of member States, which—(i) Has provided notification to ICAO of the scope of tasks and functions delegated or transferred to the RSOO, including but not limited to: sharing common or harmonized aviation regulations, licensing, certification, authorization, approval, and surveillance of civil aviation activities, and any legal authority delegated or transferred by a member State to the RSOO; and (ii) Has stipulated the specific tasks, functions, delegations, and transfers by member States discussed in paragraph (c)(2)(i) of § 129.1, and any other collective understandings of member States in RSOO formation documentation, such as an agreement, treaty, or informal record, that is available for review by the Administrator.

The FAA will verify that each task or function required by ICAO Annex 6 standards is included in the transfer and formation documentation and the organizational responsibility for each is clearly defined. Consistent with the definition of RSOO, the RSOO formation documentation should outline not only the roles and responsibilities for tasks and functions necessary for the issuance of the AOC but also for the tasks and functions for continued oversight of the AOC during its full life cycle, for the FAA to fully evaluate an RSOO-issued AOC. The FAA acknowledges that there may be a transfer of tasks and functions back to the State of the Operator. This is not an unusual practice and could be a result of the RSOO leveraging the member State's availability of trained and qualified personnel needed for the evaluation of the carrier for initial certification.

The FAA uses a similar practice for certification of United States part 121 air carriers. The part 121 certification process is a cooperative effort between the Certification and Evaluation Program Office (CEPO) of the Safety Analysis and Promotion Division and the Office of Air Carrier Safety Assurance (ACSA). The CEPO is a dedicated group of aviation safety inspectors (ASIs) with experience in the details and nuances of initial Air Carrier certification. The CEPO assigns an assistant manager as the Certification Front Line Manager (CFLM) and a qualified CEPO team leader as the certification project manager (CPM). The CEPO initiates the certification and directs the project through all phases of the certification process. The ACSA assigns the certificate management office (CMO) and establishes a Certificate Management Team (CMT) to perform Continued Operational Safety (COS) oversight after certification. The Certification Project Team (CPT) will include ASIs from the CEPO and the ACSA. These dedicated inspectors then turn the continued surveillance of the operator to the CMO to perform the oversight functions for the carrier. This is done to ensure standardization of air carrier certification.

Transfer of tasks or functions from the State of the Operator to an RSOO may provide a similar benefit of targeting resources with detailed experience in the initial certification of air carrier, working in concert with those

[13] ICAO Doc. 9734, Part B, 2.2.6.

[14] See ICAO Doc. 9734, Part B 2.1.8, which states ''Under the Chicago Convention, only the State has responsibility for safety oversight, and this responsibility may not be transferred to a regional body. Thus, although the State may delegate specific safety oversight tasks and functions to an RSOO, such as inspections for the certification of an operator, the State must still retain the minimum capability required to carry out its responsibilities under the Chicago Convention. States must always be able to properly and effectively monitor the safety oversight functions delegated to the RSOO.''

responsible for continued oversight of the air carrier.

E. Validation of SMS in IASAs for RSOO Member States

ALPA recommended the FAA take the opportunity to expand its own IASA program by ensuring the novel regional safety organization requires its licensees to fully comply with SMS, a critical element that ICAO has implemented to address a root cause of accidents and incidents. ALPA asserted the FAA has the discretionary power, as well as an obligation to flight crews, the traveling public, and the international community, to evaluate RSOO member State implementation of SMS. Moreover, ALPA noted one such RSOO, EASA, appears headed toward conducting such SMS audits, which ALPA stated is a welcome development.

The FAA's current IASA program includes evaluation of a State's aviation oversight program for compliance with ICAO Annex 1, Annex 6, and Annex 8. Neither the current IASA Notice of Policy Statement [15] nor section 369 of the FAA Reauthorization Act of 2024 codifying the IASA program in 49 U.S.C. 44747 include Annex 19 Safety Management requirements for this program. The inclusion of these requirements was not contemplated in the NPRM and is therefore beyond the scope of this rulemaking.

F. Safety Concerns

ALPA contended the proposed rule would create significant safety concerns that were not addressed in the NPRM. Specifically, ALPA contended an RSOO that has aircraft certification oversight, and oversees AOCs, could determine that when using certain aircraft certified by the RSOO, airline flights could be conducted with only a single pilot on the flight deck while the second pilot is resting or otherwise unavailable to serve as the second pilot. ALPA commented that the RSOO's certification and AOC approval combined would potentially allow a significant safety threat to occur in airspace managed by the United States, unraveling many of the advances in airline safety that have been achieved in the United States. ALPA urged the FAA to be extremely vigilant and consider unintended safety consequences of allowing RSOOs to simultaneously operate as an aircraft certification organization and AOC oversight organization.

APA stated that delegating the authority to determine whether a carrier or person has satisfied those standards to a regional organization, which may have competing political or industrial influences, allows for the possibility the standards will be unintentionally deteriorated or altered. To eliminate the possibility for such deterioration or alteration, the FAA should not amend the current regulations to allow the acceptance of an RSOO-issued operator certificate in lieu of one issued directly by the State of the Operator.

Finally, APA contended even where a member State has elected to delegate the authority to issue operator certificates to an RSOO, the member State must still retain the ability to issue operator certificates on its own. Accordingly, maintaining the regulatory status quo would not adversely impact a foreign applicant's ability to obtain operating specifications from the FAA because they remain able to obtain an operator certificate issued by the State of the Operator.

The FAA understands this concern but disagrees with the premise that the role of an RSOO in the issuance of an AOC alone, as promulgated in this rulemaking, could introduce risks such as foreign air carrier single pilot operations in the United States. The cited concern would not be the result of this rulemaking allowing the FAA to accept an RSOO-issued AOC. This could similarly be an issue for AOCs issued by the State of the Operator should that State apply a risk-based approach allowing one pilot to fly while the other rests. In either case, foreign air carriers approved for operations into the United States must still comply with all applicable FAA rules and regulations, including the conditions and limitations set forth in their operations specifications. The FAA notes that, to date, no part 121 or 129 air carriers have been authorized by the FAA to operate with a single pilot at the controls.

While not directly subject of this rulemaking, the FAA will consider the risk of single pilot operations identified by ALPA for all foreign AOC applicants and adjust our policy as required to ensure these risks are properly mitigated or prohibited during our evaluation of the proposed operation to ensure the operator is properly and adequately equipped to conduct the operations described in the operations specifications.

The FAA notes ICAO Annex 6, Part 1, paragraph 9.1.1 addresses composition of flight crews. It states:

> The number and composition of the flight crew shall not be less than that specified in the operations manual. The flight crews shall include flight crew members in addition to the minimum numbers specified in the flight manual or other documents associated with the certificate of airworthiness, when necessitated by considerations related to the type of aeroplane used, the type of operation involved and the duration of flight between points where flight crews are changed.

The number of crew required not only drives the type certification requirements listed in the operations manual but also the type of operation. This standard allows the FAA to ensure the risks of any operation have been identified, assessed, and properly mitigated.

The FAA agrees the State of the Operator is responsible for establishing requirements for issuing AOCs that are compliant with the ICAO standards. The FAA's IASA program validates the State's compliance with these ICAO standards. When the tasks or functions related to AOC issuance or oversight activities pertaining to AOC issuance are transferred to an RSOO, the State of the Operator is still responsible for ensuring the transferred functions continue to comply with ICAO standards even if the State of the Operator did not issue the AOC. This remains true whether States transfer all or part of the AOC issuance tasks or functions for a specific carrier or retain the ability to issue other AOCs in their State.

The FAA also agrees that vigilance is needed when issuing part 129 operation specifications. As such, there are additional regulatory requirements, and a valid AOC is only one part of the requirements for issuing a foreign operator a part 129 authorization. Section 129.7(c) lists all the requirements for issuance of operations specifications for authorization to conduct service to the United States.

Introduction of risks when authorizing part 129 operations is addressed through the evaluation of the carrier to ensure they are properly and adequately equipped to conduct the operations described in the operations specifications and are in compliance with the requirements of part 129. Also, 14 CFR 129.5(b) states ''Each foreign air carrier conducting operations within the United States must conduct its operations in accordance with the Standards contained in Annex 1 (Personnel Licensing), Annex 6 (Operation of Aircraft), Part I (International Commercial Air Transport—Aeroplanes) or Part III (International Operations—Helicopters), as appropriate, and in Annex 8 (Airworthiness of Aircraft) to the Convention on International Civil Aviation.''

These steps ensure all foreign commercial operations are properly

[15] *International Aviation Safety Assessment (IASA) Program Change,* Policy Statement (78 FR 14912, March 8, 2013).

assessed, and any associated risks are appropriately mitigated. This is true not only for carriers issued AOCs by RSOO but all carriers requesting authorization to operate to the United States.

The FAA intends to file a difference with ICAO because the acceptance of RSOO-issued AOCs reflects a departure from the international standard in ICAO Annex 6, paragraph 4.2.1.1 to the extent the means of compliance in this final rule is different from the corresponding standard in Annex 6. However, the FAA's assessment of the formation documentation between the member State and RSOO to validate the ICAO standards for issuing an AOC have been met will ensure an equivalent level of safety.

G. Miscellaneous Amendments

As previously noted, the FAA proposed to amend § 129.9(a)(3) to reflect the possible acceptance and recognition as valid by the FAA of AOCs issued by an RSOO on behalf of the State of the Operator. In this final rule, the FAA has revised the regulatory text proposed for 14 CFR 129.9(a)(3) and (b)(3) by removing the reference that an AOC may be issued by the State of the Operator or an RSOO. This language is unnecessary in this context since the application requirements in 14 CFR 129.7(c)(5) specify the issuing entities from which the FAA may accept AOCs. Removal of this duplicative language is a technical amendment and not a substantive change.

H. Effective Date

The FAA determined to apply a 30-day effective date to this final rule. Therefore, this final rule will take effect 30 days after publication in the **Federal Register**. The FAA generally applies a longer effective date to final rules to allow time for the impacted regulated community to prepare to come into compliance with the requirements of a final rule. However, this final rule is considered to be enabling to the extent the FAA is expanding the options for AOC acceptance by the FAA for purposes of applications for part 129 operations specifications. The FAA expects the effective date of this final rule to benefit the impacted community of operators seeking to apply for part 129 operations specifications based on an RSOO-issued AOC by allowing for the earlier submission of an application. The FAA notes that no such applications are currently considered pending before the FAA. Once this final rule takes effect, operators may submit an application to the FAA consistent with revised 14 CFR 129.7, and the FAA will be prepared to begin the review process. During this process, the FAA will ascertain if sufficient information has been provided to validate continued compliance with the required ICAO standards or if an IASA of the State will be required before the AOC can be considered acceptable to the Administrator. The FAA further notes that consistent with § 129.7(a)(2), the application must be submitted to the FAA at least 90 days before the intended date of operation.

V. Regulatory Notices and Analyses

Federal agencies consider the impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Orders 12866, 13563, and 14094 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $183,000,000 using the most current (2023) Implicit Price Deflator for the Gross Domestic Product.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not significant under section 3(f)(1) of Executive Order 12866, as amended; will not have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

A. Regulatory Impact Analysis

This rule will allow for the FAA's acceptance of AOCs issued by RSOOs, and it will update the regulatory basis for denial of applications for operations specifications. There are no changes to the analysis of this final rule as it was presented in the proposed rule.

Update the Process for Accepting AOCs Issued by RSOOs

Prior to this action, a foreign air carrier applying for operations within the United States or applying to operate U.S.-registered aircraft solely outside of the United States must hold a valid AOC issued by the State of the Operator. The existing regulations do not provide for acceptance of an AOC issued by any other entity other than the State of the Operator. This final rule will allow the FAA to recognize AOCs issued by an RSOO if the State of the Operator is a member State of that RSOO. This allows foreign air carriers with a valid AOC issued by an RSOO, if acceptable to the Administrator, to be issued authorization to operate to and from the United States, providing travel services to citizens of the United States and the foreign countries, economic opportunities for U.S. airlines through code share agreements with these operators, and expanded route structures for these code share partners. This final rule is consistent with ICAO resolutions and guidance, which address the development and use of RSOOs.

Under current practice for operations within the United States, before acceptance of the AOC, the FAA conducts an IASA of the State of the Operator.[16] These assessments involve pre-work and document review in the United States lasting several weeks, followed by an on-site assessment in the State of the Operator lasting five business days. When the State of the Operator is a member of an RSOO, and that State has delegated functions or tasks to the RSOO, this prework would include a review of functions or tasks that are delegated by the State to an RSOO, the scope and level of those delegations, and the need for RSOO participation in assessing the State's compliance with the ICAO standards. The assessments involve two to four inspectors and an attorney. An FAA IASA team incurs traveling costs, such as airfare, lodging, and per diem associated with the travel destination. However, these assessments, including the prework, are not expected to represent an additional cost of the rule because the FAA currently conducts them, and the FAA does not expect any increase in the number of assessments as a result of this rulemaking. Currently, when accomplishing an IASA on a State that has delegated functions or tasks to an RSOO, the FAA reviews that delegation to ensure that the State's and the RSOO's functions and tasks are in

[16] 87 FR 58725 (September 28, 2022).

compliance with the ICAO requirements. Historically, the FAA has conducted, on average, five IASAs each year. As stated previously, there are many factors that determine the number of IASAs that will be accomplished in any given year. These include application for own metal service to the United States by a carrier from a State that has not been assessed where a risk assessment has identified concerns over the State's safety oversight functions which warrant a reassessment. Any risks identified in the course of the FAA's review of an RSOO-issued AOC for acceptance will be included as one factor in the risk assessment for the respective member State.

If the FAA has previously assessed a State of the Operator and that State subsequently delegated functions or tasks, such as issuance of AOCs by the RSOO, the FAA will review the RSOO formation documentation to determine if further assessment to evaluate the continued compliance with ICAO standards is required. If the FAA determines it needs to do further assessment, the State of the Operator's compliance with ICAO standards for issuance of AOCs will be reviewed as part of the annual risk assessment for all IASA-categorized States. Based on the result of the risk assessment, an IASA of that State may be accomplished as one of that year's or future year's IASAs. The FAA does not anticipate requiring an IASA reassessment based solely on the inability to determine compliance with ICAO standards for the transferred function of AOC issuance and the conduct of oversight-related tasks pertaining to AOC issuance between an RSOO and member States. The FAA has many means to reach out to the RSOO and the member State to obtain information concerning questions on compliance. This can involve sending letters for clarification and direct discussions to clarify issues. However, until the State's ICAO compliance can be validated, the RSOO-issued AOC of the operator will not be considered acceptable, and no authorization will be granted.

Update the Regulatory Basis for Denial of Applications for Operations Specifications

The FAA is also amending the conditions under which the FAA can deny the application for operations specifications in subpart A of part 129. Prior to this action, § 129.7(c) specifies that an applicant must meet five conditions to be issued operations specifications. These conditions require that the applicant meets the applicable requirements of part 129; holds the economic or exemption authority required by the Department of Transportation, applicable to the operations to be conducted; complies with the applicable security requirements of 49 CFR chapter XII; is properly and adequately equipped to conduct the operations described in the operations specifications; and holds a valid AOC issued by the State of the Operator. However, § 129.7(d) states that the application may be denied if the applicant is not properly and adequately equipped to conduct the operations described in the operations specifications. The change will expand the basis for denial to any of the five conditions listed in § 129.7(c). The updates to the regulatory basis for denial of applications for operations specifications will not result in any costs. The change will align the basis for denial of an application to the conditions that must be met for issuance of operations specifications. This will allow the FAA to formally deny applications that do not meet the requirements of § 129.7(c) instead of the FAA's current practice of holding the approval of ineligible applications in abeyance until the conditions are met or the applicant withdraws the application. There are no specific costs associated with holding an application in abeyance. The benefit of allowing denial of an application based on not meeting the regulatory criteria is reduction of applications in process and ensuring currency of information provided with an application.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses, 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.

This final rule will update the regulations for applications by foreign air carriers and foreign persons for operations specifications under part 129. The final rule will apply to foreign air carrier operations within the United States and to U.S.-registered aircraft in common carriage solely outside the United States. Since this final rule only impacts foreign applicants, this rule has no impact on U.S. small entities. If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b) and based on the foregoing, the head of FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that it ensures the safety of the American public by allowing the acceptance of AOCs issued by an RSOO when reviewed and found acceptable to the Administrator. While this action will result in the United States' filing a difference with ICAO regarding compliance with ICAO Annex 6, paragraph 4.2.1.1, this rule change results in an equivalent action to the standard and is in the public's interest. As a result, the FAA does not consider this rule as creating an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. The FAA determined that the final rule will not result in the expenditure of $183,000,000 or more by State, local, or

Tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has determined that there is no new information collection associated with the requirement for application for foreign air carrier authorization under 14 CFR part 129. In order to apply for operation specifications, the applicant is required to provide a copy of their AOC to the FAA. Under the final rule, the FAA intends to rely on cooperation of RSOOs to obtain the necessary formation documentation referred to in the § 129.1 definition of RSOO. No new information is required from the applicant operator if the AOC is issued by an RSOO. The burden of validation of the AOC remains with the FAA in conjunction with the State of the Operator. Approval to collect such information previously was approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and was assigned OMB Control Number 2120–0749.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable.

The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with this final rule. ICAO Annex 6, Part 1, Paragraph 4.2.1.1 requires:

> The operator shall not engage in commercial air transport operations unless in possession of a valid AOC issued by the State of the Operator.

This regulatory change to allow the FAA acceptance of RSOO-issued AOCs for a member State does not comply with this standard.

The FAA has determined this regulatory change results in a different means of compliance to that of the standard in ICAO Annex 6, Part 1, paragraph 4.2.1.1. The FAA intends to notify ICAO of this difference.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[17] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[18] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to 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; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

[17] 65 FR 67249 (November 6, 2000).

[18] FAA Order No. 1210.20 (Jan. 28, 2004), available at *www.faa.gov/documentLibrary/media/1210.pdf.*

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a ''significant energy action'' under the Executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609. The FAA has determined that this action will eliminate differences between U.S. aviation standards and those of other civil aviation authorities in States where delegation or transfer of the responsibility for issuance of AOCs to an RSOO is permitted.

VII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.govinfo.gov*. A copy may also be found on the FAA's Regulations and Policies website at *www.faa.gov/regulations_policies*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 129

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

The Amendments

For the reasons discussed in the preamble, the Federal Aviation Administration amends 14 CFR part 129 as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 1. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

■ 2. Amend § 129.1 by:
■ a. Redesignating paragraph (c)(2) as paragraph (c)(4); and
■ b. Adding a new paragraph (c)(2) and paragraph (c)(3).

The additions read as follows:

§ 129.1 Applicability and definitions.

* * * * *

(c) * * *

(2) *Regional Safety Oversight Organization* means an association or organization that comprises a group of member States, which—

(i) Has provided notification to the International Civil Aviation Organization of the scope of tasks and functions delegated or transferred to the Regional Safety Oversight Organization, including but not limited to: sharing common or harmonized aviation regulations, licensing, certification, authorization, approval, and surveillance of civil aviation activities, and any legal authority delegated or transferred by a member State to the Regional Safety Oversight Organization; and

(ii) Has stipulated the specific tasks, functions, delegations, and transfers by member States discussed in paragraph (c)(2)(i) of this section, and any other collective understandings of member States in Regional Safety Oversight Organization formation documentation, such as an agreement, treaty, or informal record, that is available for review by the Administrator.

(3) *State of the Operator* means the State in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.

* * * * *

■ 3. Amend § 129.7 by revising paragraphs (c)(5) and (d) to read as follows:

§ 129.7 Application, issuance, or denial of operations specifications.

* * * * *

(c) * * *

(5) Holds a valid air operator certificate, if acceptable to the Administrator, issued by:

(i) The State of the Operator; or

(ii) A Regional Safety Oversight Organization (RSOO) if the State of the Operator is a member State of that RSOO.

(d) An application may be denied if the Administrator finds that the applicant does not meet one or more of the criteria listed in paragraph (c) of this section.

■ 4. Amend § 129.9 by revising paragraphs (a)(3) and (b)(3) to read as follows:

§ 129.9 Contents of operations specifications.

(a) * * *

(3) The certificate number and validity of the foreign air carrier's air operator certificate;

* * * * *

(b) * * *

(3) In the case of a foreign air carrier, the certificate number and validity of the foreign air carrier's air operator certificate;

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC.

Michael Gordon Whitaker,

Administrator.

[FR Doc. 2024–29688 Filed 12–12–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–6464–C–03]

RIN 2501–AE11

Adoption of 2020 Core Based Statistical Area Standards; Correction

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development.

ACTION: Final rule; correction.

SUMMARY: The Department of Housing and Urban Development (HUD) is correcting a final rule entitled, ''Adoption of 2020 Core Based Statistical Area Standards'' that published in the **Federal Register** on December 6, 2024.

DATES: Effective January 6, 2025.

FOR FURTHER INFORMATION CONTACT: With respect to this technical correction, contact Allison Lack, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: On December 6, 2024 (89 FR 96898), HUD published a final rule that adopts the 2020 Core Based Statistical Area (CBSA) standards as determined by the Office of Management and Budget's July 16, 2021, **Federal Register** notice for all HUD uses of CBSAs. The rule amended 24 CFR part 5 by adding a new subpart M. In reviewing the December 6, 2024, final rule, HUD identified an inadvertent error in § 5.3001. Specifically, HUD incorrectly designated two paragraphs as paragraph (e) and two paragraphs as paragraph (f). This document corrects these errors.

Correction

In FR Doc. 2024–28450, published December 6, 2024, at 89 FR 96898, the following corrections are made:

§ 5.3001 [Corrected]

■ 1. On page 96901, in the first column, the second paragraph (e) is redesignated as paragraph (g), the second paragraph (f) is redesignated as paragraph (h), and

paragraphs (g) and (h) are redesignated as paragraph (i) and (j), respectively.

Aaron Santa Anna,

Associate General Counsel, Office of Legislation and Regulations.

[FR Doc. 2024–29682 Filed 12–16–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10012]

RIN 1545–BR09

Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains a correction to TD 10012, which was published in the **Federal Register** on Wednesday, November 20, 2024. TD 10012 contains final regulations that modify existing regulations to allow certain unincorporated organizations that are owned in whole or in part by applicable entities to be excluded from the application of partnership tax rules.

DATES: This correction is effective on January 19, 2025. For the date of applicability, see § 1.761–2(f).

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, contact Cameron Williamson at (202) 317–6684 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 10012) that are the subject of this correction are under sections 761(a), 6031(a), 6417(d) and (h), and 7805(a) of the Internal Revenue Code.

Correction of Publication

Accordingly, FR Doc. 2024–26944 (TD 10012), appearing on page 91552 in the **Federal Register** on Wednesday, November 20, 2024, is corrected as follows:

§ 1.761–2 [Corrected]

■ 1. On page 91562, in the first column, in paragraph (a)(5)(ii), in the third line down from the top of the paragraph, the language ''§ 1.6417–1(c)'' is corrected to read ''§ 1.6417–1(k)''.

Kalle L. Wardlow,

Federal Register Liaison, Publications & Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–29654 Filed 12–16–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 543

[BOP–1180–F]

RIN 1120–AB80

Federal Tort Claims Act—Technical Changes

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes minor revisions to our regulations regarding the Federal Tort Claims Act that clarify requirements for presenting claims and correct obsolete and/or incorrect references to Bureau offices.

DATES: This rule is effective December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel/Rules Administrator, Federal Bureau of Prisons at (202) 353–4885.

SUPPLEMENTARY INFORMATION:

I. Discussion

This rule outlines how an individual (inmate, staff member, or civilian) presents an administrative claim under the Federal Tort Claims Act to the Bureau of Prisons and explains the Bureau's procedures for processing such claims. After consideration of the one public comment, the Bureau finalizes the provisions of the interim rule and correcting amendment, while making minor edits to section 543.32(h).

A. Procedural History

On November 7, 2023, the Bureau published an interim final rule at 88 FR 76656 making minor revisions to regulations in 28 CFR part 543, subpart C—Federal Tort Claims Act, to clarify requirements for presenting claims and correct obsolete and/or correcting incorrect references to Bureau offices. On December 20, 2023, the Bureau published a correcting amendment at 88 FR 87903 to correct inadvertent errors and omissions in the interim rule. The correction was required for two reasons. First, we neglected to revise the headings of three paragraphs in § 543.31 to conform with the statement-like form of other paragraph headings we amended in the interim rule. Thus, the correction changed the headings of paragraphs (a), (b), and (e) in § 543.31 so that they are declarative rather than interrogative. Second, the third instruction in the interim rule omitted paragraphs (g) and (h) in § 543.32, so the regulatory text was not updated. Accordingly, the correction revised the instructions to include those missing paragraphs, thereby appropriately updating the Code of Federal Regulations.

Before, the comment period for the rule closed on January 8, 2024, we received one comment.

B. Discussion of Single Comment Received

Comment: The commenter writes primarily about one of his own tort claims and argues in support of settlement of his claim. However, he makes two observations about the rule. First, he notes that the six-month investigatory period ''might be a long time to let some problems fester.'' Second, he suggests we add the following language in § 543.32: ''The Associate General Counsel shall attempt to optimize any long-term benefits to prison operations and the public interest in reaching a settlement.''

Response: No response is required as to individualized disagreements with the general FTCA claim system, which are outside the scope of this rulemaking action, nor will the Bureau address the merits of any particular FTCA claim in this context.

The Bureau needs six months to fully investigate claims and to make informed decisions on whether to deny the claim or pursue settlement. This six-month period is provided by statute, 28 U.S.C. 2675(a), and applies to all FTCA administrative claims presented to the required appropriate federal agency, no matter the agency involved. We decline to amend the rule based on this first suggestion.

Regarding the second suggestion, we note that Bureau legal staff already consider many factors in the settlement of administrative FTCA claims, including factors not specifically included in the regulations. For example, in evaluating each claim individually for settlement, the Bureau considers all information provided by the claimant, the investigation, relevant records, and applicable policy and legal authority. We also decline to amend the rule based on this second suggestion.

C. Discussion of Minor Edits to Section 543.32(h)

Upon further review of § 543.32(h), we decided to make two changes to that section to clarify the language and ensure it more closely aligns with the FTCA. The language of the second sentence to that section currently in effect via the interim final rule reads: ''If you have not received a letter either proposing a settlement or denying your claim within six months after the date your claim was presented, you may assume your claim is denied.'' The revised language included in the final rule reads: ''If you have not received a letter denying your claim within six months after the date your claim was presented, you may deem the absence of a response to your claim as a denial.''

The first change is to the first clause of the second sentence in section § 543.32(h). We changed the language by removing the phrase ''either proposing a settlement or'' because we do not want to imply the Bureau's proposal of a settlement within six months precludes the option of the claimant deeming a claim denied. As discussed more in the next paragraph, what triggers the option for the claimant to deem a claim denied and to file suit is the failure of an agency to make a final disposition of a claim within six months. Since a settlement offer is not a ''final disposition,'' it cannot serve to preclude the claimant from filing suit.

The second change is to the second clause of the second sentence in § 543.32(h). In reviewing our draft of the final rule, we determined that use of the word ''assume'' in the second sentence to § 543.32(h) was unnecessary and confusing inasmuch as the statute itself, 28 U.S.C. 2675(a), does not mention ''assumptions.'' That language confers upon the claimant the ''option'' to deem their claim finally denied; the claimant is not required to ''assume'' that the sending of a settlement proposal means they are not entitled to file suit if six months have elapsed since presentment. Instead, the claimant retains the option to continue negotiating with no statute of limitations penalty, or they may opt instead to ''deem'' the claim denied and pursue a lawsuit in federal court.

II. Regulatory Analyses

Executive Orders 12866, 13563 and 14094. This rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this final rule is limited to inmates in the custody of the Federal Bureau of Prisons.

Executive Order 13132. This rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, the Bureau determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act. The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this rule and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995. This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one 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.

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

List of Subjects in 28 CFR Part 543

Prisoners.

Colette S. Peters,

Director, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96, the Bureau finalizes with minor changes, the interim rule published on November 7, 2023, (88 FR 76657) and the correction published on December 20, 2023 (88 FR 87903).

PART 543—LEGAL MATTERS

■ 1. The authority citation for 28 CFR part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to Offenses committed after that date), 5039; 28 U.S.C. 509, 510, 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

Subpart C—Federal Tort Claims Act

■ 2. Revise § 543.32(h) to read as follows:

§ 543.32 Processing the claim.

* * * * *

(h) *Response timeline.* Generally, you will receive a decision regarding your claim within six months of when you properly present the claim. If you have not received a letter denying your claim within six months after the date your claim was presented, you may deem the absence of a response to your claim as a denial. You may then proceed to file a lawsuit in the appropriate United States District Court.

[FR Doc. 2024–29691 Filed 12–16–24; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 543

[BOP–1175–F]

RIN 1120–AB75

Inmate Legal Activities: Visits by Attorneys

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (''Bureau'' or ''BOP'') finalizes revisions to regulations related to attorney-client visits at BOP institutions.

DATES: Effective December 17, 2024, BOP adopts the interim final rule published at 89 FR 8330 on Feb. 7, 2024, as final without change.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel/Rules Administrator, Federal Bureau of Prisons, at (202) 353–4885.

SUPPLEMENTARY INFORMATION:

I. Background

On February 7, 2024, BOP published an interim final rule that amended regulations related to attorney visits. 89 FR 8330 (Feb. 7, 2024). The comment period closed on April 8, 2024, and we received six comments. Of those six comments, only two were related to the rule; each of those comments is discussed more fully below. Of the four unrelated comments, one noted generally that BOP should review its regulations annually for improvement; one was mistakenly posted to this docket instead of to the docket for another BOP rulemaking; another laments the general treatment of January

6 defendants; and the last advocates for revised regulations regarding clergy visits to BOP facilities. After consideration of the two relevant public comments, BOP is adopting the interim final rule on this subject without change.

II. Discussion

We received two relevant, substantive comments after publication of the interim final rule. Each comment is addressed below.

Comment 1: The commenter states that the revised rule does not go far enough to address other means that facilitate attorney-client communications, emphasizing that the availability of private telephone calls is essential to facilitate attorney-client communications. The commenter gave several examples where inmates and their attorneys encountered difficulties obtaining approval from officials at BOP institutions for unmonitored telephone calls. However, the commenter did not address the specific changes to the regulation addressing in-person visits by attorneys.

Response: BOP agrees that meaningful access to counsel includes reasonable access to unmonitored telephone calls to facilitate attorney-client communications. Through separate procedures, BOP enables confidential communications between an inmate and their attorney through legal visits, unmonitored telephone calls, and unmonitored legal correspondence. Title 28 CFR 540.102 and 540.103 address unmonitored telephone calls, while 28 CFR 540.18 and 540.19 address unmonitored legal correspondence.

However, the comment is out of scope as the interim final rule only addressed the procedures for in-person, confidential attorney visits as provided in Part 543, and did not address the different issue of rules applicable to telephone calls between inmates and their attorneys, which are in separate regulations at 28 CFR 540.102–540.103. To the extent the commenter's suggestion is intended to be construed as a petition for rulemaking pursuant to 5 U.S.C. 553(e), a comment to a rule pertaining to a different issue in a different set of regulations is not the proper mechanism to effectuate that provision. Individuals in BOP custody with individualized concerns or questions regarding the implementation of applicable regulations or policy are reminded of their rights to address such issues through the agency's Administrative Remedy Program, as outlined at 28 CFR part 542 and in BOP Program Statement 1330.18 (available at *www.bop.gov/policy*). Thus, BOP concludes that no changes are needed in the final rule in light of this comment.

Comment 2: The commenter states that the rule should address attorney visits for individuals located at administrative facilities in holdover status; that the rule does not address circumstances where a pretrial or unsentenced individual is in holdover status at a BOP institution that houses convicted individuals; that BOP's explanation for the rule indicates that attorneys can visit a client in BOP custody like social visitors during normal visiting hours without advanced notice; that many attorneys are unwilling to be added to their client's regular social visiting list and that some attorneys are unwilling to provide personally identifying information on the social visit application forms; and that BOP should clarify if attorneys can show up at an institution during normal social visiting hours for a visit in the common area (*i.e.,* not in a private setting) without providing sensitive personal information.

Response: As background, BOP is responsible for the custody and care of sentenced federal inmates, felony offenders convicted and sentenced to a term of imprisonment under the DC criminal code a number of state and military offenders who are housed on a contractual basis, and pretrial detainees and pre-sentenced offenders housed in BOP facilities on behalf of the United States Marshals Service (USMS).

The USMS is responsible for the care and custody of individuals charged with a federal offense. Responsible for housing approximately 63,000 detainees, the USMS acquires detention bedspace through agreements with state and local governments in addition to available BOP pretrial cells. Approximately 75 percent of the detainees in the custody of the USMS are detained in state, local, and private facilities; the remainder are housed in BOP facilities. Ordinarily, pretrial inmates in BOP custody are housed in administrative institutions including Metropolitan Detention Centers (MDCs), Federal Detention Centers (FDCs), and Metropolitan Correctional Centers (MCCs). These institutions may also house convicted inmates awaiting sentencing or movement to designated institutions, or sentenced inmates who require further court appearances. A small number of other BOP institutions also house pretrial inmates in specific units within the main facility or in jail units located in satellite buildings separate from the main facility.

As explained in the preamble to the interim final rule, the prior version of § 543.13(c) provided that, to schedule any legal visit at any BOP institution, an attorney must make an advance appointment for a visit through the warden, and that the warden must make every effort to accommodate a legal visit when prior notification is not practicable. That prior rule was promulgated on June 27, 1979.

To clarify, the interim final rule updated § 543.13(c) to allow both scheduled and unscheduled attorney visits during designated attorney visitation hours at BOP institutions whose mission is to house pretrial detainees and unsentenced individuals. However, the rule retains the requirement that attorneys seeking to visit clients at BOP institutions whose mission is to house convicted individuals must make an advance appointment for a legal visit and that the warden must make every effort to accommodate a legal visit when prior notification is not practicable.

Attorney visits for holdover inmates. The term ''holdover'' refers to individuals in BOP custody who are transferring from one BOP institution to another. These individuals are categorized as being in holdover status until they arrive at the institution to which they are officially designated. The interim final rule did nothing more than allow both scheduled and unscheduled attorney visits during designated attorney visitation hours at BOP institutions that have a pretrial mission housing pretrial and unsentenced individuals, and it retains the requirement for an advanced appointment for attorney visits at all other BOP institutions. Accordingly, attorney visits with any individual in holdover status housed at an institution that does not have a pretrial mission must ordinarily make an advance appointment for a legal visit. Individuals in holdover status and their attorneys may coordinate legal visits in the same manner as the offender population at the particular facility in which the individual is temporarily housed en route to their designated institution. To clarify, it is the type of institution and its specific mission that are determinative for purposes of scheduling attorney visits; an individual's temporary status as a ''holdover'' is not determinative. Further changes to the rule addressing attorney visits for pretrial and unsentenced individuals on holdover status are unnecessary.

Adding attorneys to client's social visiting list. The commenter urges that this rule address the option for attorneys to be added to their client's social visiting list, but that subject is addressed by separate rules applicable

to regular visitors at 28 CFR part 540, subpart D. In coordination with their client, attorneys may seek to be added to their client's regular social visiting list and visit under the same conditions as other visitors in accordance with part 540, subpart D.

Again, this comment is out of scope of what was addressed in the interim final rule. Such social visits are conducted in an open setting, not a confidential setting for attorneys to meet with their clients privately. By contrast, confidential attorney visits, which are the subject of this rule, are governed by part 543. To the extent the commenter's suggestion is intended to be construed as a petition for rulemaking pursuant to 5 U.S.C. 553(e), a comment to a rule pertaining to a different issue in a different set of regulations is not the proper mechanism to present such a petition. Thus, the BOP concludes that no changes are needed in the final rule in light of this comment.

The commenter also urges that the rule clarify whether attorneys are required to submit the same personal information as other visitors to be added to the inmate's approved social visitor list. As noted, attorneys may seek to be added to their client's regular social visiting list and visit under the same conditions as other visitors pursuant to separate rules applicable to regular visitors at 28 CFR part 540, subpart D, and the more granular details regarding the processing of social visits are addressed in the BOP policy implementing those provisions. The BOP declines to make changes to Part 543 in response to this comment.

For the foregoing reasons, we conclude that no changes are needed in the regulatory language in § 543.13(c) and (e) as adopted in the interim final rule, and that no other changes are needed in BOP's regulations in connection with this specific rulemaking action. Accordingly, this rule finalizes the interim final rule without change.

IV. Regulatory Certifications

Executive Orders 12866, 13563 and 14094. This rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this final rule is limited to inmates in the custody of the Bureau of Prisons and their attorneys.

Executive Order 13132. This rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, BOP determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform (Plain Language). This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to specify provisions in clear language. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this final rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this final rule is intended to create any legal or procedural rights enforceable against the United States.

Regulatory Flexibility Act. The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this rule and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders and detainees committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to BOP's appropriated funds.

Unfunded Mandates Reform Act of 1995. This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (as adjusted for inflation) in any one 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.

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

List of Subjects in 28 CFR Part 543

Prisoners, Legal Activities.

PART 543—LEGAL MATTERS

■ Accordingly, under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96, BOP adopts the interim final rule on this subject, published at 89 FR 8330 on Feb. 7, 2024, as a final rule, without change.

Colette S. Peters,

Director, Federal Bureau of Prisons.

[FR Doc. 2024–29681 Filed 12–16–24; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 531

RIN 1235–AA44

Tip Regulations Under the Fair Labor Standards Act (FLSA); Restoration of Regulatory Language

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule; technical amendment.

SUMMARY: On October 29, 2021, the U.S. Department of Labor (Department) published a final rule (2021 Dual Jobs Rule) addressing the determination of when a tipped employee is employed in dual jobs under the Fair Labor Standards Act (FLSA or the Act). The 2021 Dual Jobs Rule took effect on December 28, 2021.On October 29, 2024, a federal appeals court issued an order vacating regulatory text from the Department's 2021 Dual Jobs Rule, with the effect of reinstating the Department's original FLSA regulation on the topic. In accordance with that court order, the Department is issuing this final rule to remove from the Code of Federal Regulations (CFR) the corresponding regulatory text that the Department promulgated through the 2021 Dual Jobs Rule and reinstate regulatory text as it existed in the CFR prior to the effective date of the 2021 Dual Jobs Rule. This action is a technical amendment accounting for changes in the law which have already occurred.

DATES: This rule is effective December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel Navarrete, Director of Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background and Basis for the Restoration of Regulatory Text

Section 6(a) of the FLSA requires covered employers to pay nonexempt employees a minimum wage of at least $7.25 per hour. *See* 29 U.S.C. 206(a). Since 1966, section 3(m) of the FLSA has permitted employers that meet certain requirements to satisfy a portion of their minimum wage obligation to a ''tipped employee'' by taking a partial credit, commonly known as a ''tip credit,'' toward the minimum wage based on the amount of tips that the tipped employee receives.[1] An employer that elects to take a tip credit cannot satisfy the entirety of the minimum wage requirement with tips because the employer must pay the tipped employee a direct cash wage of at least $2.13 per hour.[2] Based on the current Federal minimum wage of $7.25 per hour, the employer may claim a tip credit against its wage obligation of up to $5.12 per hour towards its minimum wage obligation for a tipped employee, provided—among other criteria—that the employee actually receives sufficient tips to earn not less than the FLSA minimum wage.

Section 3(t) of the FLSA defines a ''tipped employee'' as ''any employee engaged in an occupation in which [the employee] customarily and regularly receives more than $30 a month in tips.'' [3] The Department promulgated the original FLSA regulations for tipped employees in 1967, the year after Congress first created the tip credit provision.[4] As part of that rulemaking, the Department included a ''dual jobs'' provision, recognizing that an employee may be employed by the same employer both in a tipped occupation and in a non-tipped occupation, for example, ''where a maintenance man in a hotel also serves as a waiter.'' 29 CFR 531.56(e) (1967).[5] This provision explained that an employee is a ''tipped employee'' for the purposes of section 3(t) only while the employee is engaged in the tipped occupation, and their employer may take a tip credit against its minimum wage obligation only for the time the employee spends in that tipped occupation. *Id.* At the same time, the regulation recognized that tipped employees may perform ''related'' duties that are not ''themselves . . . directed toward producing tips,'' and used the example of a server who ''spends part of her time'' performing non-tipped duties, such as ''cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses.'' *Id.*[6]

On December 30, 2020, the Department published *Tip Regulations Under the Fair Labor Standards Act (FLSA),* 85 FR 86756 (2020 Tip Rule), a final rule revising various regulatory requirements related to the treatment of tipped employees under the FLSA. Among other changes, the 2020 Tip Rule would have revised the Department's original dual jobs regulation at 29 CFR 531.56(e) consistent with subregulatory guidance issued by the Department in 2018 and 2019,[7] but the dual jobs provisions in the 2020 Tip Rule never took effect.

The 2020 Tip Rule was published with a scheduled effective date of March 1, 2021.[8] However, on February 26, 2021, the Department delayed the effective date of the 2020 Tip Rule until April 30, 2021.[9] On March 25, 2021, the Department proposed to further delay the effective date of three portions of the 2020 Tip Rule, including the portion of the rule that would have amended the Department's dual jobs regulation, until December 31, 2021.[10] On April 29, 2021, the Department finalized the proposed partial delay.[11]

On October 29, 2021, the Department published *Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal,* 86 FR 60114 (2021 Dual Jobs Rule), which withdrew the dual jobs provisions of the 2020 Tip Rule.[12] Separately, the 2021 Dual Jobs Rule adopted at 29 CFR 531.56(e)–(f) a new dual jobs regulation, which—among other changes—set specific limits on the amount of time that tipped employees who are paid a direct cash wage which is less than the Federal minimum wage can spend performing ''work that is not tip-producing, but directly supports tip-producing work.'' [13] The 2021 Dual Jobs Rule took effect on December 28, 2021.

On October 29, 2024, the United States Court of Appeals for the Fifth Circuit issued a decision in *Restaurant Law Center* v. *U.S. Department of Labor,* vacating regulatory text codified at 29 CFR 531.56(e)–(f) from the Department's 2021 Dual Jobs Rule, with the effect of reinstating the Department's original dual jobs regulation. 115 F.4th 396 (5th Cir. 2024), *superseded on reh'g* (5th Cir. Oct. 29, 2024) (vacating the 2021 Dual Jobs Rule ''insofar as it modifies 29 CFR 531.56 as promulgated in 1967''). Since the Fifth Circuit's mandate issued on October 29, 2024, the operative version of 29 CFR 531.56(e) is thus the dual jobs regulation that was in place on December 27, 2021, prior to the effective date of the 2021 Dual Jobs Rule.

Consistent with the Fifth Circuit's mandate, this rule amends 29 CFR 531.56 to reinstate the regulatory text as it appeared prior to the effective date of the 2021 Dual Jobs Rule. This action is a technical correction accounting for changes in the law which have already occurred.

II. Procedural and Other Matters

A. Administrative Procedure Act

Section 553(b)(B) of the Administrative Procedure Act (APA) provides that an agency is not required to publish a notice of proposed rulemaking in the **Federal Register** and solicit public comments when the agency has good cause to find that doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The Department finds that good cause exists to dispense with public notice-and-comment rulemaking procedures in this final rule because such procedures are unnecessary. The final rule accounts for the effects of the Fifth Circuit's order in *RLC,* which already changed the operative regulatory provisions by vacating regulatory text codified at 29 CFR 531.56(e)–(f) from the Department's 2021 Dual Jobs Rule, with the effect of

[1] *See* Fair Labor Standards Amendments of 1966, Public Law 89–601, sec. 101, 80 Stat. 830, 830 (1966); *see also* 29 U.S.C. 203(m)(2)(A).

[2] *See* Fair Labor Standards Amendments of 1989, Public Law 101–157, sec. 5, 103 Stat. 938, 941 (1989) (requiring employers to pay a cash wage of at least ''50 percent of the [$4.25 per hour] minimum wage rate after March 31, 1991''). Although subsequent FLSA Amendments have increased the federal minimum wage, those amendments did not change the $2.13 per hour minimum cash wage for tipped employees, which has been in effect since April 1, 1991.

[3] 29 U.S.C. 203(t).

[4] *See* 32 FR 13575 (Sept. 28, 1967).

[5] *See* 32 FR 13580–81 (codified at 29 CFR 531.56(e)).

[6] In 2011, the Department issued a technical correction to its original dual jobs regulation by updating the amount of tips needed to qualify as a tipped employee under section 3(t) of the FLSA from $20 per month to $30 per month, *see* 76 FR 18855, accounting for the increase of that statutory threshold effectuated by the 1977 FLSA Amendments. *See* Fair Labor Standards Amendments of 1977, Public Law 95–151, sec. 3, 91 Stat. 1245, 1249 (1977). The 2011 rule did not otherwise change the Department's original dual jobs regulation.

[7] *See* 85 FR 86767–72, 86790.

[8] *Id.* at 86756.

[9] *See* 86 FR 11632.

[10] *See* 86 FR 15811.

[11] *See* 86 FR 22597.

[12] *See* 86 FR 60138.

[13] 86 FR 60158 (codified at 29 CFR 531.56(f)(4)). Specifically, the 2021 Dual Jobs Rule provided that tipped employees must receive the full minimum wage from their employer whenever untipped support work exceeds 20 percent of their workweek or 30 continuous minutes. *Id.* The 2021 Dual Job Rule also provided examples of tasks that fall into the following three categories: (1) tip-producing work; (2) work that directly supports tip-producing work; and (3) work that is not part of a tipped occupation. 86 FR 60157–58 (codified at 29 CFR 531.56(f)(2)–(3) and (5)).

reinstating the Department's earlier original dual jobs regulation. The final rule makes technical non-substantive revisions to correct the CFR to reflect the court's mandate. These amendments ensure the accuracy of the CFR, but do not alter any regulatory obligations.

Section 553(d) of the APA provides that substantive rules should take effect not less than 30 days after the date they are published in the **Federal Register** unless ''otherwise provided by the agency for good cause found[.]'' 5 U.S.C. 553(d)(3). The Department finds that good cause also exists to make this final rule immediately effective because a delayed effective date is unnecessary and contrary to the public interest. A delayed effective date is unnecessary because the Fifth Circuit's order vacating regulatory text codified at 29 CFR 531.56(e)–(f) from the Department's 2021 Dual Jobs Rule has already taken effect. Delaying the ministerial act of removing the regulatory text of the vacated rule and restoring the operative regulatory text in the **Federal Register** would also be contrary to the public interest in light of the Department's need to expediently implement the court's final judgment, and because it could lead to confusion, particularly among employers and tipped employees, about the FLSA's requirements for the payment of minimum wages to tipped employees. The Department concludes that a delayed effective date is both unnecessary and is contrary to the public interest, providing good cause to bypass a delayed effective date.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires that an agency prepare an initial regulatory flexibility analysis (IRFA) when proposing, and a final regulatory flexibility analysis (FRFA) when issuing, rules that will have a significant economic impact on a substantial number of small entities. However, the RFA only applies to ''rule[s] for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law.'' [14] Because the Department has determined for good cause that public notice and comment is not required, the Department is not publishing a notice of proposed rulemaking for this final rule to comply with the court's order. Therefore, the RFA and its procedural requirements do not apply.

C. Executive Orders 12866 and 13563

Under Executive Order 12866 (as amended by Executive Order 14094), OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive order and OMB review. As amended by Executive Order 14094, section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory 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 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 impact 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 the Executive order.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. OIRA has determined that this final rule is not significant for the purpose of Executive Orders 12866 and 13563.

D. Congressional Review Act

Before a rule can take effect, 5 U.S.C. 801, the Congressional Review Act (CRA) requires agencies to submit the rule and a report indicating whether it is a major rule to Congress and the Comptroller General. This final rule does not qualify as a major rule for purposes of the CRA and is therefore not subject to the timing requirements provided in 5 U.S.C. 801(a)(3).

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–38, requires agencies to consider whether a rule will result in the expenditure of $100,000,000 or more (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. This technical amendment will not result in such an expenditure.

F. Executive Order 13132, Federalism

The Department has (1) reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8. The final rule is also not subject to the requirements of the PRA because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

List of Subjects 29 CFR Part 531

Wages.

PART 531—WAGE PAYMENTS UNDER THE FAIR LABOR STANDARDS ACT OF 1938

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 29 U.S.C. 203(m) and (t), as amended by sec. 3(m), Pub. L. 75–718, 52 Stat. 1060; sec. 2, Pub. L. 87–30, 75 Stat. 65; sec. 101, sec. 602, Pub. L. 89–601, 80 Stat. 830; sec. 29(B), Pub. L. 93–259, 88 Stat. 55 sec. 3, sec. 15(c), Pub. L. 95–151, 91 Stat 1245; sec. 2105(b), Pub. L. 104–188, 110 Stat 1755; sec. 8102, Pub. L. 110–28, 121 Stat. 112; and sec. 1201, Div. S., Tit. XII, Pub. L. 115–141, 132 Stat. 348.

[14] *See* 5 U.S.C. 601(2); *see also id.* at 604(a) (requiring a FRFA for rules where the agency was ''required . . . to publish a general notice of proposed rulemaking'').

■ 2. Amend § 531.56 by revising paragraph (e) and removing paragraph (f) to read as follows:

§ 531.56 "More than $30 a month in tips."

* * * * *

(e) *Dual jobs.* In some situations an employee is employed in a dual job, as for example, where a maintenance man in a hotel also serves as a waiter. In such a situation the employee, if he customarily and regularly receives at least $30 a month in tips for his work as a waiter, is a tipped employee only with respect to his employment as a waiter. He is employed in two occupations, and no tip credit can be taken for his hours of employment in his occupation of maintenance man. Such a situation is distinguishable from that of a waitress who spends part of her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. It is likewise distinguishable from the counterman who also prepares his own short orders or who, as part of a group of countermen, takes a turn as a short order cook for the group. Such related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips.

Signed this 12th day of December, 2024.

Jessica Looman,

Administrator, Wage and Hour Division.

[FR Doc. 2024–29798 Filed 12–16–24; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC32

Privacy Act Exemptions

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of the Treasury, Departmental Offices is issuing a final rule, exempting a new system of records entitled ''Department of the Treasury, Departmental Offices .413—Outbound Investment Security Program Notification System'' from certain provisions of the Privacy Act. The Outbound Investment Security Program Notification System is being established for information collected in connection with the implementation of Executive Order 14105 of August 9, 2023. The exemption is intended to comply with the legal prohibitions against the disclosure of certain kinds of information and to protect certain information maintained in this system of records.

DATES: This rule is effective on January 16, 2025.

FOR FURTHER INFORMATION CONTACT: For general questions and questions regarding privacy issues, please contact: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–5710.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Treasury (Treasury) published a notice of proposed rulemaking (Systems Exemption NPRM) in the **Federal Register**, 89 FR 76783 (published September 19, 2024), proposing to exempt portions of the system of records from one or more provisions of the Privacy Act.

As background, on August 9, 2023, the President issued Executive Order 14105, 88 FR 54867 (the Outbound Order), which declares a national emergency to address the threat to the United States posed by countries of concern, which seek to develop and exploit sensitive technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities. Among other things, the Outbound Order directs the Secretary of the Treasury to issue regulations that require U.S. persons to provide notification of information to Treasury regarding certain transactions involving a person of a country of concern that is engaged in certain activities involving covered national security technologies and products that may contribute to the threat to the national security of the United States as identified in the Outbound Order. The Outbound Order also directs the Secretary of the Treasury to issue regulations that prohibit certain transactions by a U.S. person involving a person of a country of concern that is engaged in certain activities involving covered national security technologies and products that pose a particularly acute national security threat to the United States. The Outbound Order authorizes the Secretary of the Treasury to exempt from applicable prohibitions or notification requirements any transaction determined to be in the national interest of the United States. On August 9, 2023, Treasury issued an advance notice of proposed rulemaking, 88 FR 54961 (published August 14, 2023), to explain initial considerations and seek public comment on implementation of the Outbound Order.

On June 21, 2024, Treasury issued a notice of proposed rulemaking to seek public comment on the proposed rule, 89 FR 55846 (published July 5, 2024). On October 28, 2024, Treasury issued a final rule, [89 FR 90398] (published November 15, 2024) (the Outbound Rule), setting forth the regulations that implement the Outbound Order. The Outbound Rule requires U.S. persons to provide notification of certain transactions. This information will include relevant details on the U.S. person(s) involved in the transaction as well as information on the transaction and the foreign person(s) involved. These notifications will increase the U.S. Government's visibility into transactions by U.S. persons or their controlled foreign entities and involving technologies and products relevant to the threat to the national security of the United States due to the policies and actions of countries of concern. These notifications would also be helpful in highlighting aggregate sector trends and related capital flows as well as informing future policy development. The Outbound Rule also requires any U.S. person seeking a national interest exemption for a particular transaction to submit information to Treasury regarding the scope of that transaction including, as applicable, the information that would be required for a notification under the Outbound Rule.

Treasury's Departmental Offices published separately the notice of a new system of records, 89 FR 76917 (published September 19, 2024), for information collected in connection with the implementation of the Outbound Order.

Public Comments

Treasury received five comments on the Systems Exemption NPRM. Four commenters support the proposed exemptions because of their importance to protect national security. One commenter urged Treasury to consider the importance of transparency and accountability in government, as well as the impact exemptions to the Privacy Act could have on public trust. The commenter expressed concern that the Systems Exemption NPRM was too broad and noted that exemptions to the Privacy Act should be clearly defined and limited to situations implicating national security. The commenter also questioned whether there were any checks and balances in place to ensure that data is only collected in the interest of national security and public safety.

Treasury notes the importance of transparency and accountability and the role of the Privacy Act in supporting those goals. As noted in the Systems Exemption NPRM, notification is limited to those transactions that may contribute to the threat to the national security of the United States identified in the Outbound Order, and the scope of notifiable transactions is linked to subsets of technologies and products and based on specific descriptions and technical thresholds provided in the Outbound Rule. In addition, the specific information required to be submitted to Treasury in the notifications is a limited universe of information related to the relevant transaction. Furthermore, as noted in the Outbound Rule, Treasury recognizes the importance of safeguarding sensitive information and has included specific confidentiality provisions in the regulations. Among the checks and balances in place, the Outbound Order requires annual reports be submitted to the President with an assessment of the effectiveness of the measures imposed under the Outbound Order in addressing threats to the national security of the United States, among other things. Treasury makes no changes to this final rule in response to these comments.

Privacy Act

Treasury is hereby promulgating a final rule to exempt the Outbound Investment Security Program Notification System from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2) and the authority vested in the Secretary of the Treasury by 31 CFR 1.23(c).

Under 5 U.S.C. 552a(k)(1), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is subject to the exemption contained in section 552(b)(1) of this title. (Freedom of Information Act, exemption (b)(1) protects from disclosure information that has been deemed classified ''under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy'' and is ''in fact properly classified pursuant to such Executive order.'')

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records contains investigatory materials compiled for law enforcement purposes that are not within the scope of subsection (j)(2) of the Privacy Act (which applies to agencies and components thereof that perform as their principal function any activity pertaining to the enforcement of criminal laws).

To the extent that this system of records contains classified information protected by 5 U.S.C. 552a(k)(1) or investigatory materials compiled for law enforcement purposes protected by 5 U.S.C. 552a(k)(2), Treasury exempts the following system of records from various provisions of the Privacy Act:

DO .413—Outbound Investment Security Program Notification System

Under 5 U.S.C. 552a(k)(1) and (k)(2), Treasury exempts certain records in the above-referenced system of records be exempt from 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f) of the Privacy Act. See 31 CFR 1.36.

The following are the reasons why the classified records and investigatory materials contained in the above-referenced system of records may be exempted from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

1. 5 U.S.C. 552a(c)(3) requires an agency to make any accounting of disclosures of records required by 5 U.S.C. 552a(c)(1) available to the individual named in the record upon his or her request. Exemption from this requirement is appropriate because release of the accounting of disclosures of the records in this system could alert individuals whether they have been identified as the subject of an analysis related to the national security interests of the United States, to the existence of the analysis, and reveal the interest on the part of Treasury as well as the recipient agency. Disclosure of the accounting would present a serious impediment to efforts to protect national security interests by giving individuals an opportunity to learn whether they have been identified as subjects of a national security-related analysis. As further described in the following paragraph, access to such knowledge would impair Treasury's ability to carry out its mission, since individuals could:

i. Take steps to avoid analysis;

ii. inform associates that a national security analysis is in progress;

iii. learn the nature of the national security analysis;

iv. learn the scope of the national security analysis;

v. begin, continue, or resume conduct that may pose a threat to national security upon inferring they may not be part of a national security analysis because their records were not disclosed; or

vi. destroy information relevant to the national security analysis.

2. 5 U.S.C. 552a(d)(1) through (4) grant individuals access to records containing information about them and permit them to request amendment of a record pertaining to them and require the agency either to amend the record or note the disputed portion of the record and, if the agency refuses to amend the record, to provide a copy of the individual's statement of disagreement with the agency's refusal, to persons or other agencies to whom the record is thereafter disclosed. Exemption from this requirement is appropriate because access to a portion of the records contained in this system of records could inform individuals whether they have been identified as the subject of an analysis related to the national security interests of the United States, to the existence of the analysis and reveal the interest on the part of Treasury or another agency. Access to the records would present a serious impediment to efforts to protect national security interests by permitting the individual who is the subject of a record to learn whether they have been identified as a subject of a national security-related analysis. Access to such knowledge would impair Treasury's ability to carry out its mission, since individuals could take steps to impede the analysis and avoid detection, including the steps described in paragraph 1.i–through vi of this section. Amendment of the records would interfere with ongoing analysis and impose an impossible administrative burden. The information contained in the system may also include classified information, the release of which would pose a threat to the national security of the United States. In addition, permitting access and amendment to such information could disclose sensitive security information that could be detrimental to Treasury.

3. 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive order. Exemption from this requirement is appropriate because what information is relevant and necessary may not always be apparent at the time of collection. In the interests of national security, it is appropriate to include a broad range of information that may aid in identifying and assessing the nature and scope of national security threats to the United States. Additionally, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific analysis. In the interests of national security, it is appropriate to retain all

information that may aid in establishing patterns of suspicious activity.

4. 5 U.S.C. 552a(e)(4)(G) through (I) and 5 U.S.C. 552a(f) require an agency to publish the agency procedures whereby individuals can be notified if the system of records pertains to them, how they can gain access to any record pertaining to them in the system of records and contest its content, and the categories of sources of records in the system. Exemption from these requirements is appropriate because, as noted above, this system is exempt from the access and amendment provisions of subsection (d).

Any records from another Treasury system of records or another Executive Branch agency's system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) that may also be included in this system of records retains the same exempt status as such records have in the system for which such exemption is claimed.

Regulatory Analysis

This rule is not a ''significant regulatory action'' under Executive Order 12866. Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule, issued pursuant to 5 U.S.C. 552a(k), exempts certain information maintained by Treasury in the above-referenced systems of records from certain provisions of the Privacy Act. Small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

The related information collections have been submitted to the Office of Management and Budget on July 8, 2024 under control number: 1505–0282.

List of Subjects in 31 CFR Part 1

Courts, Freedom of Information, Government Employees, Privacy.

For the reasons stated in the preamble, part 1 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—DISCLOSURE OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 301, 321; 31 U.S.C. 3717.

■ 2. Amend § 1.36 by adding, in alphanumeric order, entries for ''DO .413—Outbound Investment Security Program Notification System'' in table 8 to paragraph (e)(1)(ii) and table 11 to paragraph (g)(1)(ii) to read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of the Privacy Act and this part.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

TABLE 8 TO PARAGRAPH (e)(1)(ii)

No.	Name of system
* * * * * * *	
DO .413	Outbound Investment Security Program Notification System.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

TABLE 11 TO PARAGRAPH (g)(1)(ii)

No.	Name of system
* * * * * * *	
DO .413	Outbound Investment Security Program Notification System.

* * * * *

Dated: December 11, 2024.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2024–29596 Filed 12–16–24; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0559]

RIN 1625–AA00

Safety Zone; West Passage Narragansett Bay, Jamestown, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is amending the current temporary safety zone in the vicinity of the West Passage Narragansett Bay, Jamestown, RI, in two ways. First, we are extending the effective period by 30 days to January 31, 2025. Second, by updating the name of the cable laying vessel. The temporary safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by cable laying operations being conducted. When enforced, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Southeastern New England.

DATES:

Effective date: This temporary interim rule is effective from December 17, 2024

through 11:59 p.m. on January 31, 2025. The rule will only be subject to enforcement while the Cable Laying Vessel SKAGERRAK or the J.F. Brennan construction barge #4132 are engaged in cable preparation and cable laying operations.

Comments due date: Comments and related material must be received by the Coast Guard on or before January 16, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0559 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 MST2 Nicholas Easley, Sector Southeastern New England, U.S. Coast Guard; telephone 206–827–4160, email *Nicholas.S.Easley@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Southeastern New England
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
TIR Temporary interim rule
U.S.C. United States Code

II. Background Information and Regulatory History

This temporary interim rule (TIR) amends the current temporary safety zone in the vicinity of the West Passage Narraganset Bay, Jamestown, RI. An earlier TIR published on August 29, 2024, established the first safety zone regulation for that waterway in 33 CFR 165.T01–0559 (89 FR 70100).

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 doing so would be impracticable and contrary to the public interest. The recently changed details of the project were not known to the Coast Guard in sufficient time to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with the cable laying process. The expeditious implementation of this rule is in the public interest because it will help ensure the safety of personnel, waterway users, and the marine environment.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety hazards associated with the cable installation being conducted by the cable laying vessel SKAGERRAK and the J.F. Brennan construction barge #4132.

Although the first regulation was published as an interim rule without prior notice, public comment was nevertheless desirable to ensure that the regulation is both workable and reasonable. No comments were received during a 30-day comment period that ended September 30, 2024. Accordingly, an additional 30-day comment period for this temporary interim rule will allow persons wishing to comment to do so by submitting written comments as set out under **ADDRESSES** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Sector Southeastern New England (COTP) has determined that potential hazards associated with the cable installation that started on September 1, 2024, will be a safety concern for anyone within a 250-yard radius of the cable laying vessel SKAGERRAK and the J.F. Brennan construction barge #4132. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the cable installation is being conducted.

IV. Discussion of the Rule

The Coast Guard is making the following amendments to the current temporary safety zone in the vicinity of the West Passage Narraganset Bay, Jamestown, RI, for cable laying operations:

i. We are extending the rule for an additional 30 days to allow for delays and a change to the process to the cable laying operations. The existing safety zone was effective until 11:59 p.m. December 31, 2024. The 30-day extension will now be effective until 11:59 p.m. on January 31, 2024. While the safety zone will be effective through this period, it will only be enforced during active submerged cable laying operations or other instances which may create a hazard to navigation.

ii. We are changing the name of the vessel that will be engaged in the cable laying operations. The existing safety zone was for the MARMAC 306 cable laying barge. The Coast Guard is establishing a safety zone that will cover all navigable waters within 250 yards of the barge cable laying vessel SKAGERRAK and the J.F. Brennan construction barge #4132 while they are engaged in cable laying operations in the vicinity of the West Passage Narraganset Bay, Jamestown, RI, between the Jamestown Verrazzano Bridge (41°31′43.7″ N 71°24′18.2″ W) and south to Dutch Island (41°29′47.3″ N, 71°24′16.5″ W). During times of enforcement, all persons or vessels would be prohibited from entering the safety zone without permission from the COTP or a designated representative. If cable laying operations and associated operations are completed before 11:59 p.m. on January 31, 2025, enforcement of the safety zone will be suspended, and notice given via Broadcast Notice to Mariners.

These amendments are being made to maintain safe navigation in the project area and to prevent accidental or intentional damage to persons or property on the work site.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around the safety zone which would impact a 250-yard radius around the cable laying vessel SKAGERRAK and the J.F. Brennan construction barge #4132 while engaged in cable laying operations. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone, lasting only during the hours of operation of the cable laying vessel SKAGERRAK and J.F. Brennan construction barge #4132, that will prohibit entry within 250 yards of vessels and machinery being used by personnel to install the cable. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. If we determine that changes to the temporary interim rule are necessary, the Coast Guard will publish a temporary final rule or other appropriate document. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0559 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click

on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard 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. Revise and republish § 165.T01–0559 to read as follows:

§ 165.T01–0559 Safety Zone; West Passage Narragansett Bay, Jamestown, RI.

(a) *Location.* The following area is a safety zone: All waters within a 250-yard radius of cable laying vessel *Skagerrak* and the J.F. Brennan construction barge #4132 while operating in West Passage Narragansett Bay, Jamestown, RI, between Jamestown Verrazzano Bridge (41°31′43.7″ N 71°24′18.2″ W) and Dutch Island (41°29′47.3″ N, 71°24′16.5″ W).

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio channel 16 or phone at 508–457–3211. 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 is effective from 12:01 a.m. on December 17, 2024, through 11:59 p.m. on Friday, January 31, 2025. The safety zone described in paragraph (a) of this section will only be subject to enforcement while the cable laying vessel SKAGERRAK and the J.F. Brennan construction barge #4132 are engaged in cable laying operations in West Passage Narragansett Bay, Jamestown, RI, between Jamestown Verrazzano Bridge (41°31′43.7″ N 71°24′18.2″ W) and Dutch Island (41°29′47.3″ N, 71°24′16.5″ W).

Y. Moon,

Captain, U.S. Coast Guard, Captain of the Port Sector Southeastern New England.

[FR Doc. 2024–29802 Filed 12–16–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0500]

RIN 1625–AA00

Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth Massachusetts

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

ACTION: Final rule.

SUMMARY: The Coast Guard is disestablishing the existing safety and security zone for Pilgrim Nuclear Power Plant, Plymouth, Massachusetts. Since the implementation of the regulation, the facility has permanently ceased power operations making the provisions of the security zone no longer applicable. The waterfront facility's safety and security zone will be removed from all charts, publications, and other navigational references. All related private aids to navigational marking the boundaries of the security zone will also be removed.

DATES: This rule is effective January 16, 2025.

ADDRESSES: To view the documents mentioned in the preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0500 in the search box and click ''Search'' in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call, or email Mr. Timothy Chase. Sector Boston, Waterways Management Division, U.S. Coast Guard; telephone 617–447–1620, email: *Timothy.w.chase@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

On January 9, 2024, Entergy Nuclear Operation, Inc, notified the Coast Guard that they had provided all the required documentation for disestablishment to the U.S. Nuclear Regulatory Commission as per 10 CFR 50.82(a)(1)(i). Power operations have ceased at the Pilgrim Nuclear Power Station.

In response, on August 30, 2024, the Coast Guard published a NPRM titled ''Safety and Security Zones; Pilgrim Nuclear Power Plant, Plymouth Massachusetts'' in the **Federal Register** (89 FR 70587). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth, Massachusetts. During the comment period that ended September 30, 2024, we received three written submissions.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034, 70051, and 70124. The Captain of the Port Sector Boston Massachusetts (COTP) has determined that disestablishing the safety and security zone cited in 33 CFR 165.115, Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth Massachusetts, by removing that section.

IV. Discussion of Comments, Changes, and the Rule

As noted above the Coast Guard received three written submissions on our NPRM published on August 30, 2024. All three commenters were in favor of our proposal, no Public Meetings were requested or held. There are no changes in the regulatory text of

this rule from the proposed rule in the NPRM. The Coast Guard is disestablishing the safety and security zone cited in 33 CFR 165.115, Safety and Security Zones: Pilgrim Nuclear Power Plant, Plymouth, Massachusetts, by removing that section.

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 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 need to align the regulations with the current arrangements of the port as the waterfront facility safety and security zone is no longer required. The Captain of the Port of Boston Massachusetts is removing 33 CFR 165.115.

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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

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 would not result in such an expenditure, we do discuss the potential 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the disestablishment of a security zone. Normally such actions are categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.115 [Removed]

■ 2. Remove § 165.115.

J.C. Frederick,

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

[FR Doc. 2024–29803 Filed 12–16–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0311; FRL–12123–02–R6]

Finding of Failure To Attain the Primary 2010 One-Hour Sulfur Dioxide Standard; Texas; Rusk and Panola Counties Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination that the Rusk and Panola Counties, Texas nonattainment area (Rusk-Panola area) [1] failed to attain the 2010 one-hour primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS) by the Clean Air Act (CAA or the Act) applicable attainment date of January 12, 2022. This determination is based upon consideration of and review of air quality information for the Rusk-Panola area leading up to the area's attainment date of January 12, 2022. The EPA proposed this finding of failure to attain on August 2, 2024, as part of a larger action that included proposed action on the attainment plan. EPA will be taking final action on our proposed limited approval and limited disapproval of Texas' attainment plan for the Rusk-Panola area in a separate action.

DATES: This rule is effective on January 16, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0311. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Lee, EPA Region 6 Office, Air and Radiation Division, Ozone and Infrastructure section, tel. 214–665–6750, *lee.andrew.c@epa.gov.* Please call or email the contact listed if you need alternative access to material indexed but not provided in the docket. Modeling files and other files related to the alternative model review are available upon request. Copyrighted materials are available for review in person at EPA Region 6 office located at 1201 Elm Street, Suite 500, Dallas, Texas 75270.

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

I. Background

The background for this action is discussed in detail in our August 2, 2024, proposal.[2] In that document, we proposed to determine that the Rusk-Panola area failed to attain the 2010 1-hour SO_2 NAAQS by the statutory attainment date of January 12, 2022. This proposed determination is based on the air quality, as evidenced by emissions and monitoring data, in the Rusk-Panola nonattainment area as of the January 12, 2022, attainment date.

In response to the August 2, 2024, proposal, we received several comments concerning our proposed finding of failure to attain by the January 12, 2022, attainment date. This final notification will only address comments on the finding of failure to attain by the attainment date portion of the proposal. Other comments on the August 2, 2024, proposal, including comments addressing the limited approval and limited disapproval, will be addressed in a future document. After careful consideration of public comments, the EPA is finalizing our proposed finding that the Rusk-Panola area has failed to attain the 2010 1-hour SO_2 NAAQS by the January 12, 2022, attainment date. In the following section, the EPA is providing responses to the relevant comments received on the proposal pertaining to the finding of failure to attain for the Rusk-Panola area.

II. Response to Comments

Comment: The commenter, Texas Commission on Environmental Quality, requested that, upon finalization of the EPA's finding of failure to attain for the Rusk-Panola area, the deadline for the resulting SIP submittal requirement should be no earlier than 18 months from the effective date of the finding.

Response: CAA section 179(d)(1) explicitly states that if the EPA determines that an area did not attain the NAAQS by the applicable attainment date, ''[w]ithin 1 year after the Administrator publishes the notice . . . relating to notice of failure to attain,'' the responsible State ''shall submit a revision to the applicable implementation plan'' that meets the requirements of CAA section 179(d)(2) (*i.e.,* a SIP for the area that demonstrates attainment and shall include any additional measures that the EPA may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts as required).

The request from the commenter to extend the 12-month deadline for Texas to submit a revised SIP for the Rusk-Panola area is not permissible under the plain text of the CAA.

Comment: The commenter, Luminant Generation Company LLC, owner of the major source—Martin Lake facility (Luminant), claims that the EPA's proposed finding of failure to attain the 2010 1-hour SO_2 NAAQS is unsupported and should not be finalized. The commenter states that the Agreed Order containing the emissions limitations for the Martin Lake facility requires compliance by the attainment date and ''simply phases in one additional control measure after the attainment date.'' The commenter states that the EPA provided no evidence that the provisions implemented by the attainment date were insufficient to provide for attainment.

Another commenter, Sierra Club, offered support for EPA's finding and supporting evidence, stating that the EPA must determine attainment based on the area's design value as of the attainment date, and whether the area attained the standard by that date. The commenter references support for the EPA's finding in Texas's own monitoring data for 2019–2021—the time period with three full calendar years of data before the January 12, 2022, attainment date. The commenter then references EPA's proposal for this action, arguing the data in that proposal makes clear that the Martin Lake area did not meet the 2010 1-hour SO_2 NAAQS by the January 12, 2022, statutory attainment date.

Response: We disagree with the commenter Luminant on the claim that the finding of failure to attain is unsupported, and we agree with commenter Sierra Club that monitoring showing a violating design value for this area as of the attainment date is a sufficient basis for the EPA to find that the area failed to attain by its attainment date. The attainment date for the area was January 12, 2022. The EPA may only determine an area attained based on air quality monitoring data when the design value, based on complete, quality assured monitored air quality data from three consecutive calendar years (here, 2019–2021), at each eligible monitoring site is equal or less than the 75 ppb

[1] The Rusk-Panola nonattainment area encompasses portions of Rusk and Panola County in the vicinity of the Martin Lake Power Station.

[2] *See* 89 FR 63117.

NAAQS. The Martin Creek monitoring site located within the Rusk-Panola area shows a 2019–2021 design value of 93 ppb in violation of the 2010 1-hour SO_2 NAAQS, and thus, the EPA is making the determination that the Rusk-Panola area did not attain by its statutory attainment date of January 12, 2022.[3] We also note that the 2020–2022 monitoring period (which goes beyond the attainment date) produced a design value of 81 ppb, also a violation of the 2010 1-hour SO_2 NAAQS.

The commenter Luminant's claims regarding the timing of the controls in the Agreed Order are therefore irrelevant to EPA's finding that the Rusk-Panola area failed to attain by the attainment date. The monitoring data evaluated prior to the attainment date is sufficient to support a finding of failure to attain.

While not determinative in light of the ambient monitoring data discussed above, we note that, regardless of the text of the Agreed Order, the Order was not entered into by the parties or enforceable until one month after the attainment date of January 12, 2022.[4] In fact, one provision of the Agreed Order included a compliance deadline set for six months after the attainment date.

Commenter Luminant claims that a delay in compliance past the attainment date for the ''additional control measure'' (*i.e.* the lb/MMBtu limits discussed in the preceding paragraph) established in the Agreed Order would not have a negative effect on the area attaining the standard. However, the modeling demonstration and statements made by TCEQ in the SIP refute Luminant's contention; both the modeling demonstration and TCEQ's statements establish that meeting these limits is necessary to ensure no modeled exceedances of the NAAQS.[5] Further, the commenter offers no evidence, modeling, or demonstration to support their claims that compliance with all of the SIP requirements (as provided for in the attainment demonstration modeling) was not necessary, and, monitoring data from the time period in question directly refutes commenter's position. Between January 12, 2022, and July 11, 2022, four exceedances of the standard were measured at the Martin Creek monitor in Rusk County,[6] suggesting that the area could not attain without the limits that had not yet taken effect.

Comment: One commenter, Sierra Club, stated that in addition to the EPA's finding of failure to attain by the attainment date for the Rusk-Panola area, the EPA should also prescribe additional measures that Texas must implement as expeditiously as practicable for the area to attain the standard.

Response: In accordance with CAA section 179(d), issuance of this finding of failure to attain triggers the requirement for the State of Texas to submit a SIP revision for the Rusk-Panola area within one year of the publication date of this document. The required SIP revision for the area must, among other elements, demonstrate attainment of the SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the date of this document. CAA section 179(d) also grants authority to the Administrator to reasonably prescribe additional measures that must be addressed, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts. We are not prescribing additional measures for the SO_2 SIP revisions under CAA section 179(d)(2) in this document.

III. Final Action

Under CAA section 179(c)(1)–(2), the EPA is making a determination that the Rusk-Panola area has failed to attain the 2010 1-hour SO_2 NAAQS of 75 ppb by the applicable statutory attainment date of January 12, 2022. In accordance with CAA section 179(d), issuance of this finding of failure to attain triggers the requirement for the State of Texas to submit a SIP revision for the Rusk-Panola area within one year of the publication date of this document. The required SIP revision for the area must, among other elements, demonstrate attainment of the 2010 1-hour SO_2 NAAQS as expeditiously as practicable, but no later than 5 years from the date of this document and shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts. At this time, we are not prescribing additional measures for the SO_2 SIP revisions under CAA section 179(d)(2). In addition to triggering requirements for a new SIP submittal, a final determination that a nonattainment area failed to attain the NAAQS by the attainment date triggers the implementation of contingency measures adopted under 172(c)(9).

IV. Environmental Justice Considerations

Information on Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) and how EPA defines environmental justice (EJ) can be found in the section titled ''V. Statutory and Executive Order Reviews.'' EPA provided analysis of environmental justice associated with this action solely for informational purposes, and the results of this analysis were presented in our proposal.

In accordance with section 179(c)(1)–(2) of the CAA, this final action formalizes EPA's determination that the Rusk and Panola Counties, Texas SO_2 nonattainment area has failed to attain the 2010 one-hour SO_2 NAAQS of 75 ppb by the applicable attainment date of January 12, 2022. This action provides notice to the public that the area has failed to attain the NAAQS and informs the State of Texas of CAA requirements the State needs to meet. After publishing this final rule, the State of Texas is required under CAA section 179(d) to submit revisions to the SIP for the Rusk-Panola area within one year of the publication of this document. The required SIP revision for the area must, among other elements, demonstrate attainment of the 2010 1-hour SO_2 NAAQS as expeditiously as practicable, but no later than 5 years. This final rule is not anticipated to have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Statutory and Executive Order Reviews

This action finds that an area has failed to attain the NAAQS by the relevant attainment date and does not impose additional or modify existing requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

[3] As discussed in the proposed action, the monitoring site is not located in the area of maximum concentration; however, if any monitors were located in the area of maximum concentration, they would likely show concentrations greater than or equal to those recorded at the existing monitor at the Martin Creek site (EPA AQS Site ID 48–401–1082).

[4] The Agreed Order between Luminant and Texas was entered on February 14, 2022.

[5] See page 3–2 of Texas' Rusk-Panola Attainment Demonstration State Implementation Plan Revision for the 2010 SO_2 National Ambient Air Quality Standard.

[6] On February 5, March 29, March 30, and April 13, the Martin Creek Monitor measured values at 119 ppb, 109 ppb, 95 ppb, and 77 ppb, respectively.

October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

TCEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Consistent with EPA's discretion under the CAA, EPA has evaluated the EJ considerations of this action, as is described in the proposed action at 89 FR 63117 (August 2, 2024) in the section titled, ''EJ Considerations.'' 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. In addition, there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

This action is exempt from the Congressional Review Act because it is a rule of particular applicability. The rule makes factual determinations for an identified entity (the Rusk-Panola area of Texas), based on facts and circumstances specific to that entity. The determination of failure to attain the 2010 SO_2 NAAQS does not in itself create any new requirements beyond what is mandated by the CAA.

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 18, 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, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 9, 2024.

Earthea Nance,

Regional Administrator, Region 6.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. Amend § 52.2277 by adding paragraph (c) to read as follows:

§ 52.2277 Control strategy and regulations: Sulfur Dioxide.

* * * * *

(c) *Determination of failure to attain.* Effective January 16, 2025, the EPA has determined that the Rusk and Panola Counties, Texas nonattainment area failed to attain the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standards (NAAQS) by the applicable attainment date of January 12, 2022. This determination triggers the requirements of CAA section 179(d) for the State of Texas to submit a revision to the Texas SIP for the Rusk and Panola Counties nonattainment area to the EPA by December 17, 2025. The SIP revision must, among other elements, provide for attainment of the 1-hour primary SO_2 NAAQS in the Rusk and Panola Counties, Texas SO_2 nonattainment area as expeditiously as practicable but no later than December 17, 2029.

[FR Doc. 2024–29482 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2024–0371; FRL–12159–02–R10]

Designation of Areas for Air Quality Planning Purposes; Redesignation Request and Associated Maintenance Plan for Whatcom County, WA 2010 SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 25, 2024, the State of Washington (WA) submitted a request for the Environmental Protection Agency (EPA) to redesignate to attainment a portion of Whatcom County immediately surrounding the now permanently closed aluminum smelter, Intalco Aluminum LLC, which the EPA designated nonattainment for the 2010 1-hour primary sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). Washington also submitted a request for the EPA to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. The EPA is taking the following final actions: we have determined that the Whatcom County (partial) SO_2 nonattainment area (Whatcom County area or area) is

attaining the 2010 1-hour primary SO_2 NAAQS; we are approving Washington's plan for maintaining attainment of the 2010 1-hour primary SO_2 NAAQS in the area; and we are redesignating the Whatcom County area to attainment for the 2010 1-hour primary SO_2 NAAQS.

DATES: This final rule is effective January 16, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2024–0371. 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 or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–0256 or *hunt.jeff@epa.gov.*

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

I. Background

On September 27, 2024 (89 FR 79195), The EPA proposed to take the following four separate but related actions: (1) determine that the Whatcom County area is attaining the 2010 1-hour SO_2 NAAQS; (2) approve Washington's plan for maintaining the 2010 1-hour SO_2 NAAQS (maintenance plan), including proposed approval of a ''reproducible approach'' to representing the air quality of the affected area; (3) redesignate the Whatcom County area to attainment for the 2010 1-hour SO_2 NAAQS; and (4) determine that the Whatcom County area has clean monitoring data.

The public comment period for the proposed actions closed on October 28, 2024. We received two anonymous comments, document EPA–R10–OAR–2024–0371–0014 (comment #1) and EPA–R10–OAR–2024–0371–0015 (comment #2). Both comments expressed support for the EPA's approval of Washington's redesignation request and maintenance plan. However, comment #1 and comment #2 raised concerns about Washington's ability to verify continued attainment. In addition, comment #2 suggested the contingency measures contain more specificity and that Washington should include a public accessibility plan in its Maintenance Plan. The full text of the comments may be found in the docket for this action, and we have responded to the relevant comments in section II. of this preamble. Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA.

II. EPA Responses to Comments Received

A. Monitoring Network and Verification of Continued Attainment

Comment: The EPA's proposed rulemaking provided a synopsis of Washington's strategy for verification of continued attainment in the area as part of the State's maintenance plan.[1] A more detailed explanation of Washington's ''reproducible approach'' to representing air quality, submitted to allow future monitor system modification under 40 CFR 58.14(c)(3), was provided in the maintenance plan itself.[2] With respect to this issue, comment #1 contains the statement, ''although this has well solidified evidence, it is necessary to continue monitoring the nonattainment and attainment areas of Whatcom County to ensure the air quality stays in line with the EPA's NAAQS. If the EPA did approve the request from Washington State it would further confirm the EPA's dedication to implementing their own policies.'' Comment #2 states, ''while the plan allows for flexibility in adjusting SO_2 monitoring sites, it is crucial to consider that SO_2 impacts often disproportionately affect vulnerable communities. Could the EPA establish clearer criteria or a more rigorous review process before relocating or decommissioning monitors? This would ensure that communities previously affected by emissions from the Intalco facility continue to have adequate air quality protections, even in the absence of a large point source.''

Response: We agree that Washington's maintenance plan should contain provisions for monitoring air quality in the area and verifying continued attainment. As discussed in the preamble to the proposed rulemaking, the maintenance plan contains these provisions and otherwise meets the maintenance plan requirements in CAA section 175A and the EPA's associated guidance.[3] Neither comment directly addresses the EPA's evaluation of these provisions in the preamble to the proposed rulemaking nor provides a basis for disapproving Washington's maintenance plan. To the extent the comments imply that the maintenance plan is inadequate to monitor and verify continued attainment or lacks specificity in this regard, we disagree. The following discussion summarizes Washington's approach to monitoring air quality in the area post-redesignation and verifying continued attainment.

In the EPA's December 2020 technical support document for the nonattainment designation, we determined the region of violation was most likely due to plume downwash at the Intalco facility during certain wind conditions, that the modeled area of violation did not extend far from the Intalco facility fence line, that the gradient of concentration near the areas of violation was steep, quickly dropping with distance from the Intalco facility fence line, and that other nearby industrial facilities did not sufficiently contribute to violations of the 1-hour primary SO_2 NAAQS to warrant inclusion in the nonattainment area boundary.[4] In our final nonattainment boundary determination, we concurred with the Washington Department of Ecology (Ecology) and Northwest Clean Air Agency (NWCAA) that the boundary should be drawn to encompass the cause of the SO_2 violations, the Intalco facility.

With the permanent closure of the Intalco facility, Washington's comprehensive emissions inventory, prepared as part of the maintenance plan, shows no remaining significant sources of SO_2, including mobile or area source emissions.[5] Therefore, in the absence of any current SO_2 emission sources, Washington's monitoring network and verification of continued attainment strategy focused on potential

[1] See 89 FR 79195 (September 27, 2024) at pages 79200–79202.

[2] See Chapter 6, Verification of Attainment, Control Measures, and Maintenance Demonstration, at pages 35–43.

[3] 42 U.S.C. 7505a and the September 4, 1992, Memorandum from John Calcagni titled ''Procedures for Processing Requests to Redesignate Areas to Attainment.''

[4] See 201_Appendix A Whatcom County SO_2 Area Designation.pdf, included in the docket for this action.

[5] See Chapter 5, Emissions Inventory, at pages 25–34.

future emission sources that may be located within the area.[6]

As described in our proposed rulemaking and the State's maintenance plan, the new source review (NSR) program ensures that any single facility applying for a permit to locate within the area complies with the NAAQS and other regulatory requirements.[7] In addition, Washington's maintenance plan included a stepwise process for assessing the cumulative impacts of new sources constructed in the area and triggering deployment of SO_2 monitors. This process ensures that cumulative impacts remain below the NAAQS should multiple facilities move to the area. Under the maintenance plan verification of continued attainment provisions, Washington, with NWCAA as the lead agency for the jurisdiction in coordination with Ecology, will evaluate the cumulative impacts of the new source or modifications using three sequential ''Action Levels.''

Under Action Level 1, Washington will conduct cumulative dispersion modeling using potential emissions if two conditions are met: (1) the cumulative potential SO_2 emissions in the area are greater than or equal to 250 tons per year of SO_2 and (2) the proposed new source or modification has the potential to emit 40 tons per year of SO_2 (the significant emission rate under the major NSR program). Washington will use the EPA's preferred screening and dispersion modeling tools identified in 40 CFR part 51 appendix W (''Appendix W'') as normally applicable for any source seeking a construction permit under the NSR program. If the results of the modeling under Action Level 1 indicate a design concentration of greater than or equal to 90% of the 1-hour NAAQS, then Washington will proceed to Action Level 2.

Under Action Level 2, Washington will conduct refined dispersion modeling that uses actual emissions from existing sources and potential emissions from the new source or modification. If the results of that modeling indicate a design concentration of greater than or equal to 50% of the 1-hour SO_2 NAAQS, then Washington will proceed to Action Level 3.

Under Action Level 3, Washington will deploy SO_2 ambient monitors within 1 year of the initial startup of the new source or modification. Any new monitors established for verification of continued attainment will be operated as State and Local Air Monitoring Stations (SLAMS) as part of Ecology's Primary Quality Assurance Organization (PQAO). Ecology will verify that monitor siting complies with 40 CFR part 58 appendix E (Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring) and will include any new site proposals in its annual Ambient Air Monitoring Network Plan. This plan is available for public inspection and comment for at least 30 days before its submission to the EPA by July 1 of each year. Any such proposal will be subject to review and approval by the EPA Regional Administrator, following the process described in 40 CFR 58.10.

Therefore, we disagree with the implication in comment #2 that the verification of continued attainment framework described in the State's maintenance plan lacked clear criteria or a rigorous review process. The commenter provided no details for improving the methodology or raising specific concerns with the presented framework.

With respect to the broader issue of protecting ''communities previously affected by emissions from the Intalco facility'' we agree with the commenter that these communities should be protected against future violations of health-based air quality standards. Washington's maintenance plan does so, and the commenter did not provide any specific reasons why the EPA should find to the contrary. We note that during the operation of the Intalco facility, the areas impacted by the elevated levels of SO_2 were very close to the facility's fence line and did not reach the nearby city of Ferndale.[8] More importantly, there are no current SO_2 sources in the area or SO_2 exposure risks. Current 2021–2023 design value SO_2 concentrations in the area are 3 parts per billion (ppb), much lower than the EPA's health-based NAAQS of 75 ppb.

With respect to monitoring, we reiterate that the current monitors were sited for the specific purpose of measuring building downwash impacts immediately surrounding the Intalco facility and thus are not necessarily suitable to assessing impacts to the surrounding community.[9] Accordingly, Washington included in its maintenance plan its reproducible approach to assessing future impacts on the community from new sources. This approach—coupled with NWCAA and Washington's NSR program—is adequate to ensure future development does not cause or contribute to a violation of the SO_2 NAAQS.

B. Contingency Measures

Comment: Comment #2 stated ''while the contingency measures are well-defined, additional detail about specific control measures and response timelines would help reassure the public of the plan's robustness. Particularly, if SO_2 levels approach the National Ambient Air Quality Standards (NAAQS) threshold, having a more explicit list of immediate actions the EPA or the Northwest Clean Air Agency (NWCAA) would take would demonstrate the agency's commitment to rapid response in the event of future exceedances.''

Response: We disagree that Washington's contingency measures should be more specific. As discussed in the preamble of our proposed rulemaking, the only significant source of SO_2 in the area has permanently shut down, thus the cause of any potential future NAAQS exceedance is unknown. Therefore, Washington cannot develop specific contingency measures as part of its maintenance plan.[10] Rather, Washington committed to concrete trigger levels and timelines for determining the appropriate contingency measures, but did not include specific measures in its maintenance plan. Therefore, our position remains that Washington's maintenance plan contains such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.[11]

C. Impacts of Future Sources

Comment: Comment #2 stated ''while I understand that the Clean Air Act may not require environmental justice analysis for this action, it would be prudent to consider the impacts of future sources or monitoring changes on historically marginalized communities. The inclusion of a public accessibility plan to provide real-time air quality data would support EPA's goals under Executive Order 12898, ensuring fair treatment and meaningful involvement of all residents in air quality decisions.''

Response: The EPA responded to the commenter's concern regarding

[6] See Chapter 6, Verification of Attainment, Control Measures, and Maintenance Demonstration, at pages 35–43.

[7] See 89 FR 79195 (September 27, 2024) at page 79201.

[8] See Chapter 2, Intalco—Ferndale SO_2 Nonattainment Area, at pages 8–9.

[9] See *201_Appendix A Whatcom County SO_2 Area Designation.pdf* and *202_Intalco Sulfur Dioxide Attainment Plan_2202035.pdf,* included in the docket for this action.

[10] See 89 FR 79195 (September 27, 2024) at page 79202.

[11] CAA section 175A(d).

monitoring changes in section II.A of this preamble. With respect to impacts of future sources, our proposed rulemaking discussed how the NSR permitting program is the mechanism the EPA, States, and local clean air agencies use to assess the impacts of future sources. Washington's SIP includes NWCAA Rule 300 which establishes the minor NSR program applicable to sources constructed or modified in the Ferndale Area. Under Rule 300, save for certain limited exemptions, sources with a potential to emit more than 2.0 tons per year (tpy) of SO_2 must obtain approval prior to construction.[12] NWCAA may not approve construction or modification unless, among other things, the source will employ best available control technology and allowable emissions will not cause or contribute to a violation of any NAAQS.[13] As to the latter, NWCAA may require modeling using the EPA guidelines in appendix W of 40 CFR part 51 to determine whether construction and operation of the source will cause or contribute to a violation of any NAAQS.

Washington's SIP also includes a major new source review program to regulate the construction and modification of major sources constructed or modified in the Ferndale Area.[14] In general, Washington's major NSR program incorporates by reference the Federal major NSR program at 40 CFR 52.21. The major NSR program applies to sources with a potential to emit of 100 tpy of any regulated NSR pollutant for certain listed source categories, and 250 tpy of any regulated NSR pollutant for unlisted sources. Regulated NSR pollutant includes pollutants for which the EPA has established a NAAQS. Similar to the minor NSR program, all sources subject to the major NSR program must obtain a permit before commencing construction. In order to obtain a permit, the source must, among other things, demonstrate the source will apply best available control technologies for each regulated NSR pollutant that the source has the potential to emit in significant amounts. In the case of SO_2, the significant emissions rate is 40 tpy. In addition, the source must demonstrate through dispersion modeling that construction and operation of the source will not cause or contribute to a violation of any NAAQS or violate any prevention of significant deterioration increment. We believe the NSR permitting programs described above provide the best tools available for assessing impacts to communities from future sources.

[12] Rule 300.1(A); 300.4.

[13] Rule 300.9.

[14] 40 CFR 52.2470(c); WAC 173–400–113 and WAC 173–400–700 through 173–400–750.

III. Final Action

For the reasons stated in our proposed rulemaking (89 FR 79195, September 27, 2024) and in section II. of this preamble, we are taking the following three separate but related final actions: (1) determining that the Whatcom County area is attaining the 2010 1-hour SO_2 NAAQS; (2) approving Washington's plan for maintaining the 2010 1-hour SO_2 NAAQS, including approval of a ''reproducible approach'' to representing the air quality of the affected area; and (3) redesignating the Whatcom County area to attainment for the 2010 1-hour SO_2 NAAQS.

Specifically, as described in our proposed rulemaking, the EPA has determined that the Whatcom County area is attaining the 2010 1-hour primary SO_2 NAAQS based on the most recent complete monitoring data for the three-year (2021–2023) design value period.

The EPA is approving the maintenance plan under the 2010 1-hour SO_2 NAAQS for the Whatcom County area into the Washington SIP (under CAA section 175A). The maintenance plan demonstrates that the area will continue to maintain the 2010 1-hour SO_2 NAAQS and includes a process to develop and implement contingency measures to remedy any future violations of the 2010 1-hour SO_2 NAAQS and procedures for evaluating potential violations.

The EPA has determined that the Whatcom County area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS. On this basis, the EPA is approving Washington's redesignation request for the area. Accordingly, the EPA is revising the legal designation of the portion of Whatcom County designated nonattainment at 40 CFR 81.348 to attainment for the 2010 1-hour SO_2 NAAQS.

The EPA is not finalizing a Clean Data Determination for the Whatcom County area. As noted in our proposed rulemaking, the EPA proposed the option to finalize a clean data determination in the event that the EPA did not finalize the proposed redesignation. However, because the EPA is finalizing the redesignation of the area to attainment, it is not finalizing this portion of the proposal.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment.

In addition, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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 Washington Department of Ecology did evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for communities with EJ concerns.

In addition, this final action, pertaining to redesignation of the Whatcom County area and approval of a maintenance plan for the area, would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule would not have Tribal implications and would not impose substantial direct costs on tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA provided a consultation opportunity to Tribes located near the Whatcom County area, in letters dated July 25, 2024 and July 29, 2024, included in the docket for this action.

This action is subject to the Congressional Review Act, 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).

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 18, 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, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: December 11, 2024.

Daniel Opalski,

Acting Regional Administrator, Region 10.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart WW—Washington

■ 2. In § 52.2470, amend paragraph (e), table 2, by adding the heading ''Attainment and Maintenance Planning—Sulfur Dioxide (SO_2)'' and the entry ''Sulfur Dioxide (SO_2) Maintenance Plan'' immediately after the entry for ''Particulate Matter ($PM_{2.5}$) Maintenance Plan'' to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(e) * * *

TABLE 2—ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
Attainment and Maintenance Planning—Sulfur Dioxide (SO_2)				
Sulfur Dioxide (SO_2) Maintenance Plan.	Whatcom County	7/25/24	12/17/2024, [INSERT FIRST PAGE OF **FEDERAL REGISTER** CITATION].	
*	*	*	*	*

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.348, amend the table entitled ''Washington—2010 Sulfur Dioxide NAAQS'' by revising the entry for ''Whatcom County (part)'' to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area [1]	Designation	
	Date [2]	Type
Whatcom County (part)	January 16, 2025	Attainment.
That portion of Whatcom County encompassed by the rectangle with the vertices using Universal Traverse Mercator (UTM) coordinates in UTM zone 10 with datum NAD83 as follows: (1) Vertices—UTM Easting (m) 519671, UTM Northing (m) 5412272; (2) Vertices—UTM Easting (m) 524091, UTM Northing (m) 5412261; (3) Vertices—UTM Easting (m) 519671, UTM Northing (m) 5409010; (1) Vertices—UTM Easting (m) 524111, UTM Northing (m) 5409044.		
* * * * * * *		

[1] *Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.*

[2] *This date is April 9, 2018, unless otherwise noted.*

* * * * *

[FR Doc. 2024–29575 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R05–OAR–2024–0546; FRL–12410–01–R5]

Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Allegan County, MI; Berrien County, MI; Chicago, IL-IN-WI; Cleveland, OH; Milwaukee, WI; Muskegon County, MI; Sheboygan County, WI; and Illinois portion of the St. Louis, MO-IL areas failed to attain the 2015 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date. The effect of failing to attain by the applicable attainment date is that the areas will be reclassified by operation of law to ''Serious'' nonattainment for the 2015 ozone NAAQS on January 16, 2025, the effective date of this final rule. This action fulfills EPA's obligation under the Clean Air Act (CAA) to determine whether ozone nonattainment areas attained the NAAQS by the attainment date and to publish a document in the **Federal Register** identifying each area that is determined as having failed to attain and identifying the reclassification.

DATES: This final rule is effective on January 16, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2024–0546. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI), Proprietary Business Information (PBI), 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 either through *https://www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview of Action

EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain (see CAA section 181(b)(2)). EPA's determination of attainment for the 2015 ozone NAAQS is based on a nonattainment area's design value (DV) as of the attainment date.[1]

The 2015 ozone NAAQS is met at an EPA regulatory monitoring site when the DV does not exceed 0.070 parts per million (ppm). For the Moderate nonattainment areas for the 2015 ozone NAAQS addressed in this action, the attainment date was August 3, 2024. Because the DV is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year prior to the attainment date (*i.e.,* December 31, 2023, in the case of Moderate nonattainment areas for the 2015 ozone NAAQS). As such, EPA's determinations for each area are based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2021, 2022, and 2023.

This action addresses eight areas in Illinois, Indiana, Michigan, Missouri, Ohio, and Wisconsin that were classified as Moderate for the 2015 ozone NAAQS as of the Moderate area attainment date of August 3, 2024. EPA is addressing the remaining areas, including the Missouri portion of the St. Louis area, in separate actions. Table 1 provides a summary of the DVs and the EPA's air quality-based determinations

[1] A DV is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The data handling conventions for calculating DVs for the 2015 ozone NAAQS are specified in appendix U to 40 CFR part 50. The DV for the 2015 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each air quality monitor in an area, and the DV for an area is the highest DV among the individual monitoring sites located in the area.

for the eight Moderate areas addressed in this action.

TABLE 1—SUMMARY OF NONATTAINMENT AREAS IN ILLINOIS, INDIANA, MICHIGAN, MISSOURI, OHIO, AND WISCONSIN CLASSIFIED AS MODERATE FOR THE 2015 OZONE NAAQS

Nonattainment area	2021–2023 design value (DV) (ppm)	Attainment by the attainment date
Allegan County, MI	0.075	Failed to attain.
Berrien County, MI	0.073	Failed to attain.
Chicago, IL-IN-WI	0.077	Failed to attain.
Cleveland, OH	0.073	Failed to attain.
Milwaukee, WI	0.074	Failed to attain.
Muskegon County, MI	0.077	Failed to attain.
Sheboygan County, WI	0.077	Failed to attain.
St. Louis, MO-IL	0.074	Failed to attain.

EPA is finding that the eight Moderate areas in Table 1 did not attain by their attainment dates, because their 2021–2023 DVs are greater than 0.070 ppm. If EPA determines that a nonattainment area classified as Moderate failed to attain by the attainment date, CAA section 181(b)(2)(B) requires EPA to publish a determination in the **Federal Register**, no later than 6 months following the attainment date, identifying each such area and identifying the applicable reclassification.

Under CAA section 181(b)(2)(A), the effect of this determination is that these eight areas will be reclassified by operation of law as Serious on the effective date of this final rule. The reclassified areas will then be subject to the Serious area requirement to attain the 2015 ozone NAAQS as expeditiously as practicable, but not later than August 3, 2027.

Once reclassified as Serious, the relevant States must submit to EPA the SIP revisions for these areas that satisfy the statutory and regulatory requirements applicable to Serious areas established in CAA section 182(c) and in the 2015 Ozone NAAQS SIP Requirements Rule (see 83 FR 62998, December 6, 2018). EPA is establishing deadlines for submitting SIP revisions for these reclassified areas in a separate action.

II. What is the background for this action?

On October 26, 2015, EPA issued its final action to revise the NAAQS for ozone to establish a new 8-hour standard (*see* 80 FR 65452, October 26, 2015). In that action, EPA promulgated identical tighter primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.070 ppm. Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.070 ppm.

Effective on August 3, 2018, EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS (see 83 FR 25776, June 4, 2018). In a separate action, EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone problem, determined by the area's DV (see 83 FR 10376, May 8, 2018). EPA established the attainment date for Marginal, Moderate, and Serious nonattainment areas as 3 years, 6 years, and 9 years, respectively, from the effective date of the final designations. Thus, the attainment date for Marginal nonattainment areas for the 2015 ozone NAAQS was August 3, 2021, the attainment date for Moderate areas was August 3, 2024, and the attainment date for Serious areas is August 3, 2027. On October 7, 2022 (87 FR 60897), EPA determined that 22 areas, including the eight areas addressed in this action, did not attain the standards by the Marginal attainment date, and these areas were reclassified as Moderate by operation of law.

III. What is the statutory authority for this action?

The statutory authority for these determinations is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, sections 181 and 182.

CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, State planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's DV). Classifications for ozone nonattainment areas are ''Marginal,'' ''Moderate,'' ''Serious,'' ''Severe,'' and ''Extreme,'' in order of stringency. CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, EPA shall determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. Under CAA section 181(a)(5) as interpreted by EPA in 40 CFR 51.1307, upon application by any State, EPA may grant a 1-year extension to the attainment date when certain criteria are met. One criterion for a first attainment date extension is that an area's fourth highest daily maximum 8-hour value for the attainment year must not exceed the level of the standard.

In the event an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that an ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and requires the area to be reclassified by operation of law to the

higher of: (1) The next higher classification for the area, or (2) the classification applicable to the area's DV as of the determination of failure to attain.[2] Section 181(b)(2)(B) of the CAA requires EPA to publish the determination of failure to attain and accompanying reclassification in the **Federal Register** no later than 6 months after the attainment date, which in the case of the Moderate nonattainment areas considered in this determination is February 3, 2025.

Once an area is reclassified, each State that contains a reclassified area is required to submit certain SIP revisions in accordance with its more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than August 3, 2027, the Serious area attainment date for the 2015 ozone NAAQS. Per CAA section 182(i), a State with a reclassified ozone nonattainment area must submit the applicable attainment plan requirements ''according to the schedules prescribed in connection with such requirements'' in CAA section 182(c) for Serious areas, but EPA ''may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' EPA is addressing the SIP revision and implementation deadlines for newly reclassified Serious areas, as well as the continued applicability of Moderate area requirements that these areas may not yet have met, in a separate rulemaking.

IV. How does EPA determine whether an area has attained the standard?

The level of the 2015 ozone NAAQS is 0.070 ppm.[3] Under EPA regulations at 40 CFR part 50, appendix U, the 2015 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentration (*i.e.,* DV) does not exceed 0.070 ppm. When the DV does not exceed 0.070 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. Each area's DV is determined by the highest DV among monitors with valid DVs.[4] The data handling convention in appendix P dictates that concentrations shall be reported in ''ppm'' to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a computed 3-year average ozone concentration of 0.0709 ppm is truncated to 0.070 ppm and attains the 2015 ozone NAAQS.

EPA's determination of attainment is based upon hourly ozone concentration data for calendar years 2021, 2022 and 2023 that have been collected and quality-assured in accordance with 40 CFR part 58 and reported to EPA's Air Quality System (AQS) database.[5]

State and local monitoring network plans are subject to approval by EPA on an annual basis and any interim modifications to those plans must also be approved by EPA.[6] The annual monitoring network plan process is provided in 40 CFR 58.10 and the requirements governing system modifications and monitor discontinuations are laid out in 40 CFR 58.14. Where State or local agencies seek to modify the ambient air quality monitoring networks by discontinuing a monitor station, EPA may approve such modifications subject to the criteria established in 40 CFR 58.14(c). EPA may not approve such discontinuation if doing so would compromise data collection needed for implementation of a NAAQS. If a monitor has been discontinued subject to 40 CFR 58.14 such that the discontinuation results in insufficient data to calculate a valid DV according to appendix U to 40 CFR part 50, EPA will determine the applicable area's attainment status based on the remaining monitors in the area.

V. What is EPA's determination for the areas?

EPA is determining that the eight Moderate nonattainment areas addressed in this action failed to attain the 2015 ozone NAAQS by the attainment date of August 3, 2024. The eight areas are: Allegan County, MI; Berrien County, MI; Chicago, IL-IN-WI; Cleveland, OH; Milwaukee, WI; Muskegon County, MI; Sheboygan County, WI; and the Illinois portion of the St. Louis, MO-IL area. As shown in Table 1, at least one monitor in each of these areas had a 2021–2023 DV greater than 0.070 ppm. EPA has further determined that these areas did not meet the requirement under section 181(a)(5)(B) and 40 CFR 51.1307 necessary to grant a 1-year extension of the attainment date, because at least one monitor in each area had a 2023 fourth highest daily maximum 8-hour average that was greater than 0.070 ppm. Table 2 through Table 9 show the annual fourth highest daily maximum 8-hour average ozone concentration and 2021–2023 DV for each monitor in the eight areas.

[2] All nonattainment areas named in this action that failed to attain by the attainment date would be classified to the next higher classification, Serious. None of the affected areas has a DV that would otherwise place an area in a higher classification.

[3] See 40 CFR 50.19.

[4] According to appendix U to 40 CFR part 50, ambient monitoring sites with a DV of 0.070 ppm or less must meet minimum data completeness requirements in order to be considered valid. These requirements are met for a 3-year period at a site if daily maximum 8-hour average ozone concentrations are available for at least 90% of the days within the ozone monitoring season, on average, for the 3-year period, with a minimum of at least 75% of the days within the ozone monitoring season in any one year. Ozone monitoring seasons are defined for each State in appendix D to 40 CFR part 58. DVs greater than 0.070 ppm are considered to be valid regardless of the data completeness.

[5] EPA maintains the AQS, a database that contains ambient air pollution data collected by EPA, State, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at *https://www.epa.gov/aqs.*

[6] Annual monitoring network plans for each State are available at *https://www.epa.gov/amtic/state-monitoring-agency-annual-air-monitoring-plans-and-network-assessments.*

TABLE 2—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE ALLEGAN COUNTY, MI AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
26–005–0003	Allegan	Michigan	0.078	0.073	0.075	0.075

TABLE 3—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE BERRIEN COUNTY, MI AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
26–021–0014	Berrien	Michigan	0.069	0.074	0.078	0.073

TABLE 4—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE CHICAGO, IL-IN-WI AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
17–031–0001	Cook	Illinois	0.068	0.073	0.082	0.074
17–031–0032	Cook	Illinois	0.077	0.072	0.083	0.077
17–031–0076	Cook	Illinois	0.070	0.074	0.080	0.074
17–031–1003	Cook	Illinois	0.068	0.070	0.073	0.070
17–031–1601	Cook	Illinois	0.072	0.071	0.081	0.074
17–031–3103	Cook	Illinois	0.060	0.062	0.081	0.067
17–031–4002	Cook	Illinois	0.067	0.068	0.080	0.071
17–031–4007	Cook	Illinois	0.069	0.070	0.083	0.074
17–031–4201	Cook	Illinois	0.075	0.070	0.086	0.077
17–031–7002	Cook	Illinois	0.078	0.071	0.081	0.076
17–043–6001	DuPage	Illinois	0.069	0.068	0.082	0.073
17–089–0005	Kane	Illinois	0.068	0.070	0.084	0.074
17–097–1007	Lake	Illinois	0.077	0.070	0.081	0.076
17–111–0001	McHenry	Illinois	0.069	0.070	0.084	0.074
17–197–1011	Will	Illinois	0.065	0.064	0.080	0.069
18–089–0022	Lake	Indiana	0.070	0.071	0.076	0.072
18–089–2008	Lake	Indiana	0.068	0.069	0.075	0.070
18–127–0024	Porter	Indiana	0.072	0.073	0.077	0.074
18–127–0026	Porter	Indiana	0.066	0.067	0.072	0.068
55–059–0019	Kenosha	Wisconsin	0.079	0.070	0.084	0.077
55–059–0025	Kenosha	Wisconsin	0.072	0.071	0.080	0.074

TABLE 5—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE CLEVELAND, OH AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
39–035–0034	Cuyahoga	Ohio	0.070	0.073	0.071	0.071
39–035–0060	Cuyahoga	Ohio	0.059	0.061	0.065	0.061
39–035–0064	Cuyahoga	Ohio	0.069	0.065	0.075	0.069
39–035–5002	Cuyahoga	Ohio	0.068	0.065	0.073	0.068
39–055–0004	Geauga	Ohio	0.067	0.064	0.066	0.065
39–085–0003	Lake	Ohio	0.072	0.076	0.072	0.073
39–085–0007	Lake	Ohio	0.063	0.062	0.073	0.066
39–093–0018	Lorain	Ohio	0.059	0.063	0.064	0.062
39–103–0004	Medina	Ohio	0.065	0.067	0.072	0.068
39–133–1001	Portage	Ohio	0.067	0.071	0.070	0.069
39–153–0026	Summit	Ohio	0.066	0.069	0.071	0.068

TABLE 6—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE MILWAUKEE, WI AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
55–0790010	Milwaukee	Wisconsin	0.066	0.065	0.068	0.066
55–079–0068	Milwaukee	Wisconsin	0.071	0.070	0.076	0.072
55–079–0085	Milwaukee	Wisconsin	0.072	0.074	0.076	0.074
55–089–0008	Ozaukee	Wisconsin	0.072	0.072	0.077	0.073
55–089–0009	Ozaukee	Wisconsin	0.073	0.071	0.077	0.073

TABLE 7—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE MUSKEGON COUNTY, MI AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
26–121–0039	Muskegon	Michigan	0.075	0.082	0.075	0.077

TABLE 8—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE SHEBOYGAN COUNTY, WI AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
55–117–0006	Sheboygan	Wisconsin	0.073	0.077	0.082	0.077
55–117–0009	Sheboygan	Wisconsin	0.066	0.071	0.074	0.070

TABLE 9—2021–2023 FOURTH HIGHEST DAILY MAXIMUM 8-HOUR AVERAGE OZONE CONCENTRATIONS AND DESIGN VALUES AT ALL MONITORS IN THE ST. LOUIS, MO-IL AREA

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021–2023 design value (DV) (ppm)
			2021	2022	2023	
17–119–0120	Madison	Illinois	0.070	0.076	0.078	0.074
17–119–0122	Madison	Illinois	0.070	0.067	0.078	0.071
17–1193007	Madison	Illinois	0.070	0.072	0.077	0.073
17–163–0010	St. Clair	Illinois	0.070	0.066	0.067	0.077
29–099–0019	Jefferson	Missouri	0.073	0.067	0.078	0.072
29–183–1002	St. Charles	Missouri	0.067	0.071	0.080	0.072
29–183–1004	St. Charles	Missouri	0.065	0.067	0.073	0.068
29–510–0085	St. Louis City	Missouri	0.068	0.068	0.077	0.071

VI. What action is EPA taking?

Pursuant to CAA section 181(b)(2), EPA is determining that the Allegan County, MI; Berrien County, MI; Chicago, IL-IN-WI; Cleveland, OH; Milwaukee, WI; Muskegon County, MI; Sheboygan County, WI; and Illinois portion of the St. Louis, MO-IL areas failed to attain the 2015 ozone NAAQS by the applicable attainment date of August 3, 2024. Therefore, upon the effective date of this final action, these areas will be reclassified, by operation of law, to Serious for the 2015 ozone NAAQS. Once reclassified as Serious, these areas will be required to attain the standard ''as expeditiously as practicable'' but no later than 9 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2027.

Section 553 of the APA, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because our action to determine whether these areas have attained the NAAQS by the attainment date is governed, per CAA section 181(b)(2)(A), solely by area design values as of that date. The area design values relied upon in this determination are calculations based on the certified air quality monitoring data governed by EPA's regulations and

involve no judgment or discretion. Thus, notice and public procedures are unnecessary to take this action. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

VII. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Order 14094 (88 FR 21879, April 11, 2023).

B. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the PRA of 1995 (44 U.S.C. 3501 *et seq.*). This action does not contain any information collection activities and serves only to make final determinations that the Allegan County, MI; Berrien County, MI; Chicago, IL–IN–WI; Cleveland, OH; Milwaukee, WI; Muskegon County, MI; Sheboygan County, WI; and Illinois portion of the St. Louis, MO–IL nonattainment areas failed to attain the 2015 ozone standards by the August 3, 2024, attainment date where such areas will be reclassified as Serious nonattainment for the 2015 ozone standards by operation of law upon the effective date of the final reclassification action.

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.*). This action will not impose any requirements on small entities. The determination of failure to attain the 2015 ozone standards (and resulting reclassifications), do not in and of themselves create any new requirements beyond what is mandated by the CAA. This final action would require the State to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

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. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal government and the States for purposes of implementing the NAAQS is established under the CAA.

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

This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law.

EPA has identified one Tribal area within the nonattainment areas covered by this rulemaking, that would be potentially affected by this final action. Specifically, the boundaries of the Berrien County, MI area contains the Pokagon Band of Potawatomi Indians.

EPA has concluded that the final rule may have Tribal implications for this Tribe for the purposes of Executive Order 13175 but would not impose substantial direct costs upon the Tribe, nor would it preempt Tribal law. A Tribe that is part of an area that is reclassified from Moderate to Serious nonattainment is not required to submit a Tribal implementation plan revision to address new Moderate area requirements.

However, certain permitting requirements will change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Serious, including on Tribal lands within these nonattainment areas.

EPA has communicated or intends to communicate with the potentially affected Tribe located within the boundaries of the nonattainment areas addressed in this final action, including offering government-to-government consultation, as appropriate.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

K. Congressional Review Act

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for identified entities (the Allegan County, MI; Berrien County, MI; Chicago, IL–IN–WI;

Cleveland, OH; Milwaukee, WI; Muskegon County, MI; Sheboygan County, WI; and Illinois portion of the St. Louis, MO–IL areas), based on facts and circumstances specific to those entities. The determinations of attainment and failure to attain the 2015 ozone NAAQS do not in themselves create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2025. Filing a petition for reconsideration by the Administrator of this action 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 this 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 81

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 6, 2024.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble the Environmental Protection Agency amends title 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Section 81.314 is amended in the table for ''Illinois—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entry for ''Chicago, IL-IN-WI'' to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—2015 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Chicago, IL-IN-WI:	[3] 7/14/2021	Nonattainment	1/16/2025	Serious.
Cook County.				
DuPage County.				
Grundy County (part):				
Aux Sable Township and Goose Lake Township.				
Kane County.				
Kendall County (part):				
Oswego Township.				
Lake County.				
McHenry County.				
Will County.				
* * *	*	*	*	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

[3] EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the implementation dates for the overall nonattainment area (*e.g.,* the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

* * * * *

■ 3. Section 81.315 is amended in the table for ''Indiana—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entry for ''Chicago, IL-IN-WI'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2015 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Chicago, IL-IN-WI:	[3] 7/14/2021	Nonattainment	1/16/2025	Serious.
Lake County (part):				
Calumet Township, Hobart Township, North Township, Ross Township, and St. John Township.				
Porter County (part):				

INDIANA—2015 8-HOUR OZONE NAAQS—Continued

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Center Township, Jackson Township, Liberty Township, Pine Township, Portage Township, Union Township, Washington Township, and Westchester Township.				
* * * * * * *				

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

[3] EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the implementation dates for the overall nonattainment area (*e.g.,* the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

* * * * *

■ 4. Section 81.323 is amended in the table for ''Michigan—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entries for ''Allegan County, MI'', ''Berrien County, MI'', and ''Muskegon County, MI'' to read as follows:

§ 81.323 Michigan.

* * * * *

MICHIGAN—2015 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Allegan County, MI Allegan County (part): Casco Township, Cheshire Township, City of Douglas, City of Holland, City of Saugatuck, Clyde Township, Fillmore Township, Ganges Township, Heath Township, Laketown Township, Lee Township, Manilus Township, Overisel Township, Saugatuck Township, and Valley Township.	.....	Nonattainment	1/16/2025	Serious.
Berrien County, MI: Berrien County.	.....	Nonattainment	1/16/2025	Serious.
* * * * * * *				
Muskegon County, MI Muskegon County (part): Blue Lake Township, City of Montague, City of Muskegon, City of Muskegon Heights, City of North Muskegon, City of Roosevelt Park, City of Whitehall, Dalton Township, (incl. Village of Lakewood Club), Fruitland Township, Fruitport Township, (incl. Village of Fruitport), Laketon Township, Montague Township, Muskegon Township, Norton Shores Township, White River Township, and Whitehall Township.		Nonattainment	1/16/2025	Serious.
* * * * * * *				

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

* * * * *

■ 5. Section 81.336 is amended in the table for ''Ohio—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entry for ''Cleveland, OH'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2015 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * *	*	*	*	*
Cleveland, OH		Nonattainment	1/16/2025	Serious.
Cuyahoga County.				
Geauga County.				
Lake County.				
Lorain County.				
Medina County.				
Portage County.				
Summit County.				
* * *	*	*	*	*

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.
[2] This date is August 3, 2018, unless otherwise noted.

* * * * *

■ 6. Section 81.350 is amended in the table for ''Wisconsin—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entries for ''Chicago IL-IN-WI'', ''Milwaukee, WI'', and ''Sheboygan County, WI'' to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—2015 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Chicago, IL-IN-WI	[5] 7/14/2021	Nonattainment	1/16/2025	Serious.
Kenosha County (part):				
The portion of Kenosha County bounded by the Lake Michigan shoreline on the East, the Kenosha County boundary on the North, the Kenosha County boundary on the South, and the I–94 corridor (including the entire corridor) on the West.				
* * *	*	*	*	*
Milwaukee, WI	[5] 7/14/2021	Nonattainment	1/16/2025	Serious.
Milwaukee County.				
Ozaukee County.				
Racine County (part):				
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: Highway 45 to Washington Ave. to South Beaumont Ave.				
Washington County (part):				
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: County H to N Main St/Old US Hwy 45 to WI–60 Trunk E to WI–164 S.				
Waukesha County (part):				
Going from the western county boundary to the southern county boundary: Inclusive and north of I–94 and inclusive and east of Highway 67.				
Sheboygan County, WI	[5] 7/14/2021	Nonattainment	1/16/2025	Serious.
Sheboygan County (part):				

WISCONSIN—2015 8-HOUR OZONE NAAQS—Continued

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Inclusive and east of the following roadways with the boundary starting from north to south: Union Road which turns into County Road Y which turns into Highland Drive, to Lower Road which turns into Monroe Street, to Broadway/Main Street to Highway 32 which turns into Giddings Avenue to County Road W to County Road KW.				

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the State has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

[5] EPA revised the nonattainment boundary in response to a court decision, which did not vacate any designations for the 2015 ozone NAAQS, but which remanded the designation for the identified county. Because this additional area is part of a previously designated nonattainment area, the associated implementation dates for the overall nonattainment area (*e.g.,* the August 3, 2021 attainment date) remain unchanged regardless of this later designation date.

* * * * *

[FR Doc. 2024–29137 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R03–OAR–2023–0419; FRL–11736–02–R3]

Redesignation of Portions of Westmoreland and Cambria Counties, Pennsylvania for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (the EPA or the Agency) is finalizing the redesignation of portions of Cambria County and Westmoreland County, Pennsylvania, to ''nonattainment'' for the 2010 1-hour primary sulfur dioxide (SO_2) national ambient air quality standard (NAAQS or standard). Westmoreland County was previously designated ''attainment/unclassifiable,'' and Cambria County was designated ''unclassifiable.'' The EPA notified the Commonwealth of Pennsylvania of its intended redesignation of portions of Cambria and Westmoreland counties on February 17, 2023, and published a Notice of Availability (NOA) for this action on February 12, 2024. The EPA's redesignation of portions of these counties is based on modeled violations of the 2010 1-hour primary SO_2 NAAQS.

DATES: This final rule is effective on January 16, 2025.

ADDRESSES: The EPA has established a docket for this redesignation under Docket ID Number EPA–R03–OAR–2023–0419. All documents in the docket are listed on the *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 *www.regulations.gov, o*r please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

The EPA has established a website for the designations for the 2010 SO_2 NAAQS at *www.epa.gov/sulfur-dioxide-designations/sulfurdioxide-designations-regulatory-actions.* This final redesignation action, associated technical support documents, and other related information will be added to this website.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the EPA's Final Action

The EPA is required by Clean Air Act (CAA) section 107(d) to designate all areas throughout the nation as attaining or not attaining the NAAQS within two years of the promulgation of any new or revised NAAQS. Pursuant to CAA section 107(d), the EPA must designate as ''nonattainment'' those areas that violate the NAAQS and those nearby areas that contribute to violations. Once an area has been designated, the EPA Administrator, under CAA section 107(d)(3), may at any time notify a state that a designation should be revised.

Under section 109 of the CAA, the EPA has established primary and secondary NAAQS for certain pervasive air pollutants and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards, the attainment and maintenance of which the EPA has determined, including a margin of safety, are requisite to protect the public health. The secondary NAAQS represent ambient air quality standards, the attainment and maintenance of which the EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.

On June 22, 2010 (75 FR 35520), the EPA finalized the revision of the 1-hour primary SO_2 NAAQS, codified at 40 Code of Federal Regulations (CFR) 50.17, which became effective on August 23, 2010 (hereafter referred to as the 2010 SO_2 NAAQS). The 2010 SO_2 NAAQS is met at an ambient air quality

monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 parts per billion (ppb), as determined in accordance with appendix T of 40 CFR part 50. 40 CFR 50.17(a) and (b).

The EPA was required to designate areas throughout the country for the 2010 SO_2 NAAQS by June 3, 2012. The EPA invoked a 1-year extension of the deadline to designate areas for the 2010 SO_2 NAAQS, as provided for under CAA section 107, after which the Agency completed an initial round of SO_2 designations for certain areas of the country on August 5, 2013 (referred to as ''Round 1'').[1] In Round 1, the EPA designated Indiana County, Pennsylvania and a portion of Armstrong County, Pennsylvania as nonattainment (hereafter referred collectively as the ''Indiana Area''). On January 9, 2018,[2] in a subsequent round of designations for the 2010 SO_2 NAAQS, Westmoreland County, Pennsylvania was designated as attainment/unclassifiable, and Cambria County, Pennsylvania was designated as unclassifiable.

In 2018, during the public comment period for the proposed approval of the SO_2 attainment SIP for the Indiana Area (83 FR 32606, July 13, 2018), the Sierra Club submitted a modeling analysis which claimed to also show violations of the SO_2 NAAQS within portions of Westmoreland and Cambria counties due to SO_2 emissions from sources located within the Indiana Area.[3] In 2022, during the public comment period for the proposed partial disapproval and partial approval of the Indiana Area's attainment SIP (87 FR 15166, March 17, 2022), the EPA received additional dispersion modeling from the Sierra Club, and from Keystone-Conemaugh Projects, LLC (KEY–CON),[4] focused on the Westmoreland and Cambria areas. The EPA also conducted its own modeling of those areas. Based on review of all modeling analyses, the EPA made the determination that there are modeled SO_2 NAAQS violations outside of the existing Indiana Area, in portions of Westmoreland and Cambria counties, and accordingly notified the Governor of Pennsylvania in a letter dated February 17, 2023, of our intent to redesignate portions of Westmoreland and Cambria counties as nonattainment for the 2010 1-hour primary SO_2 NAAQS, consistent with CAA section 107(d)(3)(A).[5] On June 22, 2023, Acting Secretary for the Pennsylvania Department of Environmental Protection (PA DEP), Richard Negrin, responded to the EPA's letter but did not specify whether the Commonwealth agreed or disagreed with the EPA's determination to redesignate portions of Westmoreland and Cambria counties as nonattainment for the 2010 1-hour primary SO_2 NAAQS. Instead, Pennsylvania's response included several comments questioning certain aspects of the Technical Support Document (TSD) that the EPA had developed and submitted to PA DEP with the February 17, 2023 redesignation letter. The EPA responded to the Commonwealth's comments in a January 2024 response to comments (RTC) document, which is in the docket associated with this action.[6]

The EPA is not required under CAA section 107(d)(3) to seek public comment during the redesignations process, but we elected to do so for this area to provide the public with an opportunity to give input for the EPA's consideration before promulgating any final redesignation. The EPA published a NOA for this action in the **Federal Register** on February 12, 2024 (89 FR 9815). Upon publication of the NOA in the **Federal Register**, a 45-day public comment period began. This comment period closed on March 28, 2024, and yielded comments from seven commenters. A copy of the EPA's responses to the comments received from the public is also located in the docket for this action.

II. EPA's Redesignation Decision and Supporting Air Quality Information

A. SO_2 Monitoring and Modeling Considerations

The 1-hour primary SO_2 standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. The EPA also believes that in certain cases, including when SO_2 monitors are lacking, air dispersion modeling is an appropriate tool to determine whether an area is in attainment, as discussed in the EPA's document titled, ''SO_2 NAAQS Designations Modeling Technical Assistance Document'' (Modeling TAD).[7] The Modeling TAD provides nonbinding recommendations on how to appropriately and sufficiently model ambient air in proximity to an SO_2 emission source to establish air quality data for comparison to the 2010 primary SO_2 NAAQS for the purposes of designations. For a short-term 1-hour standard, dispersion modeling of stationary sources can be the most technically appropriate, efficient, and effective because it accounts for fairly infrequent combinations of meteorological and source operating conditions that can contribute to peak ground-level concentrations of SO_2. The EPA's Guideline on Air Quality Models, found at appendix W to 40 CFR part 51, provides recommendations on modeling techniques and guidance for estimating pollutant concentrations to assess control strategies and determine emission limits.

B. The Basis of Redesignating Portions of Cambria and Westmoreland Counties, Pennsylvania to Nonattainment for the 2010 SO_2 NAAQS

Information and data providing the basis for this action are provided in a designations TSD included in the docket for this action[8] and can also be found online at *www.epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions.* Additionally, other relevant documents and files regarding this SO_2 redesignation, including PA DEP's comments on the EPA's TSD, the EPA's RTC replying to these comments, and public comments are available for review in the public docket for this action. The information can also be reviewed online at *www.epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions.*

C. Factors Considered in Determining Nonattainment Area Boundary

The EPA has issued multiple guidance documents for performing SO_2 designations, the most recent of which is a September 5, 2019 guidance from Peter Tsirigotis, Director, U.S. EPA,

[1] 78 FR 47191. Effective date October 4, 2013.

[2] 83 FR 1098. Effective date April 9, 2018.

[3] Explained further in the NOA associated with this redesignation. See 89 FR 9817 (February 12, 2024).

[4] KEY–CON, licensee for the Keystone Generating Station located in Armstrong County and the Conemaugh Generating station located in Indiana County, provided modeling to support its comments rebutting modeling and views presented by the Sierra Club and the EPA.

[5] Located in the public docket for this redesignation at *www.regulations.gov* under Docket ID No. EPA–R03–OAR–2023–0419.

[6] A copy of PA DEP's comments on the EPA's intended redesignation TSD and also the EPA's RTC replying to these comments, can be found in Docket No. EPA–R03–OAR–2023–0419 via *www.regulations.gov.*

[7] A copy is located in the docket via *www.regulations.gov,* Docket ID No. EPA–R03–OAR–2023–0419.

[8] Docket ID No. EPA–HQ–OAR–2023–0419 at *www.regulations.gov.*

Office of Air Quality Planning and Standards, to Regional Air Division Directors, U.S. EPA Regions 1–10.[9] This memorandum supplements, where necessary, prior designations guidance documents on area designations for the 2010 1-hour primary SO_2 NAAQS issued on March 24, 2011, March 20, 2015, and July 22, 2016. The September 2019 memorandum identifies evaluation factors in determining whether areas are in violation of the 2010 SO_2 NAAQS and factors that the EPA intends to assess in determining the boundaries for such areas. These factors include: (1) air quality characterization via ambient monitoring or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5) jurisdictional boundaries.

The EPA's modeling indicates that portions of Westmoreland and Cambria counties are violating the 2010 1-hour SO_2 NAAQS, and the Agency's detailed evaluation of the modeled violations, contributing sources, and intended area boundaries based on the weight of evidence of the previously identified factors are included in the TSD, which is located in the docket for this action. The EPA's boundaries of the relevant area encompass Lower Yoder Township in Cambria County, Pennsylvania and St. Clair Township, Seward Borough, and New Florence Borough in Westmoreland County, Pennsylvania.[10] A map showing these boundaries is included in the final TSD.[11]

The purpose of this final action is to announce and promulgate EPA's area redesignation of a portion of Westmoreland County, Pennsylvania from attainment/unclassifiable to nonattainment and a portion of Cambria County, Pennsylvania from unclassifiable to nonattainment for the 2010 1-hour primary SO_2 NAAQS, creating a new area called the ''Cambria-Westmoreland Area.''

The issuance of this final redesignation will require the Commonwealth of Pennsylvania to undertake certain planning requirements to reduce SO_2 concentrations within this newly redesignated nonattainment area, including, but not limited to, the requirement to submit within 18 months of redesignation, a revision to the Pennsylvania SIP that provides for attainment of the 2010 1-hour primary SO_2 NAAQS as expeditiously as practicable, but no later than five years after the effective date of redesignation to nonattainment.

III. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. This action addresses designation determinations for certain areas for the 2010 SO_2 NAAQS. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

IV. Statutory and Executive Order Reviews

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

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is exempt and, therefore, is not subject to review by the Office of Management and Budget.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action is a redesignation of portions of two counties to nonattainment and does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. Section 107(d)(2)(B) of the CAA explicitly provides that designations are exempt from the notice-and-comment provisions of the APA. In addition, designations under CAA section 107(d) are not among the list of actions that are subject to the notice-and-comment rulemaking requirements of CAA section 307(d).

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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action also 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. The division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

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

This action does not have tribal implications. It will neither impose substantial direct compliance costs on Federally recognized tribal governments, nor 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 to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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 rule does not involve technical standards.

[9] ''Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard—Round 4,'' memorandum to Regional Air Division Directors, Regions 1–10, from Peter Tsirigotis, dated September 5, 2019, available at: *www.epa.gov/sites/production/files/2019–09/documents/round_4_so2_designations_memo_09–05–2019_final.pdf.*

[10] The remaining portions of Cambria County and Westmoreland County will retain the current designations.

[11] The final boundaries are the same as the EPA's initial intended boundaries.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations. The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action, on which the EPA offered public notice and comment, changes the air quality designation of an area and triggers an obligation on the part of the Commonwealth to develop an implementation plan to improve air quality in the area so that it meets the 2010 SO_2 NAAQS. A forthcoming implementation plan by the Commonwealth will also be available for public notice and comment.

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. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 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 CAA section 307(b)(2).

V. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq.*

List of Subjects in 40 CFR Part 81

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

Michael S. Regan,

Administrator.

For the reasons stated in the preamble the Environmental Protection Agency amends title 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Amend § 81.339, in the table titled ''Pennsylvania-2010 Sulfur Dioxide NAAQS [Primary]'' by:

■ a. Removing the entry ''Cambria County'' and adding in its place the entry ''Cambria (part)'';

■ b. Adding the entry ''Cambria-Westmoreland Area Lower Yoder Township in Cambria County and St. Clair Township, Seward Borough, and New Florence Borough in Westmoreland County'' immediately before the entry ''Indiana, PA.''; and

■ c. Revising the entry ''Westmoreland County;''.

The revisions and additions read as follows:

* * * * *

PENNSYLVANIA—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area	Designation	
	Date	Type
* * * * *	*	*
Cambria (part)	1/16/2025	Unclassifiable.
* * * * *	*	*
Cambria-Westmoreland Area Lower Yoder Township in Cambria County and St. Clair Township, Seward Borough, and New Florence Borough in Westmoreland County.	1/16/2025	Nonattainment.
* * * * *	*	*
Westmoreland County (part)	1/16/2025	Attainment/Unclassifiable
* * * * *	*	*

* * * * *

[FR Doc. 2024–29229 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2018–0056; FRL 6322–03–OW]

RIN 2040–AF79

Water Quality Standards; Establishment of a Numeric Criterion for Selenium for the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (the EPA or the Agency) is amending a Federal Clean Water Act (CWA) rule, the California Toxics Rule, to promulgate a final, revised statewide chronic freshwater selenium water quality criterion applicable to certain California waters to protect aquatic life and aquatic-dependent wildlife from exposure to toxic levels of selenium. This revised criterion builds upon the science underlying the EPA's current national CWA section 304(a) recommended aquatic life freshwater criterion for selenium.

DATES: This rule is effective on January 16, 2025. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of January 16, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2018–0056. 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Maria Letourneau, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–2700; email address: *letourneau.maria@epa.gov;* or Diane Fleck, Water Division (WTR–2–1), Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (213) 244–1836; email address: *fleck.diane@epa.gov.*

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. General Information
A. Applicability
B. The EPA's Development of the Final Rule
II. Background
A. Statutory and Regulatory Authority
B. Applicable Selenium Criteria in California
C. California Toxics Rule and Endangered Species Act Consultation
D. Litigation
E. Selenium and Sources of Selenium
III. Final Freshwater Chronic Selenium Criterion
A. The EPA's Approach
B. Administrator's Determination of Necessity
C. Final Chronic Selenium Criterion for California's Fresh Waters
D. Implementation of the Final Chronic Selenium Criterion in California
E. Incorporation by Reference
IV. Endangered Species Act
V. Applicability of the EPA-Promulgated Water Quality Standards
VI. Conditions When Federal Standards Would Be Withdrawn
VII. Alternative Regulatory Approaches
VIII. Economic Analysis
IX. Statutory and Executive Orders
A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 14094 (Modernizing Regulatory Review)
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132 (Federalism)
F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
I. National Technology Transfer and Advancement Act of 1995
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. Applicability

Federal water quality standards (WQS) promulgated by the EPA in this rule will be the applicable WQS for certain waters in California for Clean Water Act (CWA) purposes after the effective date of this rule. Specifically, the chronic freshwater selenium criterion in the final rule will apply to California waters in a manner consistent with the California Toxics Rule (CTR) and the EPA's proposed rulemaking for this action (83 FR 64059, December 13, 2018). The freshwater and saltwater aquatic life criteria listed in the CTR apply as follows: (1) the freshwater criteria apply at salinities of 1 part per thousand and below at locations where this occurs 95% or more of the time; (2) saltwater criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% or more of the time; and (3) the more stringent of the two apply at salinities between 1 and 10 parts per thousand. As a result, many estuarine waters will be covered by this rule.

WQS serve as the basis for CWA programs, such as National Pollutant Discharge Elimination System (NPDES) permitting and identifying impaired waters under CWA section 303(d). Categories and entities that could potentially be affected by this rule include the following:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to certain waters of California.
Municipalities	Publicly owned treatment works or other facilities discharging pollutants to certain waters of California.
Stormwater Management Districts	Entities responsible for managing stormwater discharges to certain waters of California.
Agriculture	Agricultural entities discharging to certain waters of California.

This table is not exhaustive but, rather, it provides a guide that identifies entities that could be affected by this action. If you have questions regarding the effect of this action on a particular entity, please consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. The EPA's Development of the Final Rule

On November 29, 2018, the Administrator of the EPA signed a proposed rulemaking to establish a

selenium water quality criterion applicable to California that protects aquatic life and aquatic-dependent wildlife in certain waters of California. The proposal was published in the **Federal Register** at 83 FR 64059 on December 13, 2018. For the proposed rulemaking, the EPA provided a 60-day public comment period with a 45-day extension and held two public hearings on March 19 and March 20, 2019, to accept verbal public comments. By the end of the public comment period on March 28, 2019, the EPA received a total of 32 comments on a range of issues submitted by organizations and individuals to the docket for the rule and during the two public hearings.

For the final rule, the EPA carefully considered the public comments and feedback the Agency received on the proposed rulemaking. In relevant sections of the preamble below, the EPA provides brief summaries of certain comments. Some comments addressed issues beyond the scope of this rule. For all the comments the EPA received and the EPA's responses, see the EPA's Response to Comments document in the public docket for this rule: Docket ID No. EPA–HQ–OW–2018–0056.

II. Background

A. Statutory and Regulatory Authority

The CWA establishes the basic structure for regulating pollutant discharges from point sources into the waters of the United States. In the CWA, Congress established the national objective to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The CWA also sets forth the interim goal of achieving water quality, wherever attainable, that provides for both: (1) the protection and propagation of fish, shellfish, and wildlife; and (2) recreation in and on the water (sections 101(a) and 101(a)(2)). 33 U.S.C. 1251(a), (a)(2). To help achieve these goals, the CWA created two complementary structures for regulating discharges in CWA section 402 NPDES permits: first, technology-based effluent limitations (TBELs) that set a floor for the performance for categories of regulated dischargers; and second, water quality-based effluent limitations (WQBELs) that are established where TBELs are insufficient to meet applicable WQS or site-specific water quality goals. *See* 33 U.S.C. 1342(a). TBELs in NPDES permits are derived from secondary treatment standards (for publicly owned treatment works), effluent limitations guidelines (CWA sections 301 and 304, 33 U.S.C. 1311 and 1314), new source performance standards (CWA section 306, 33 U.S.C. 1316) promulgated by the EPA, and/or established on a case-by-case basis under section 402(a)(1) of the Act (to the extent that EPA-promulgated effluent limitations are inapplicable). If TBELs are not sufficient to achieve the WQS in the receiving water, the CWA (section 301(b)(1)(c), 33 U.S.C. 1311(b)(1)(c)) and the EPA's NPDES regulation, 40 CFR 122.44(d), require that the permit writer develop more stringent WQBELs.

WQS are the foundation of the water quality-based pollution control programs required by the CWA. Such standards serve as a description of the desired water quality condition for particular waterbodies. In addition, WQS serve as the basis for several CWA programs, including:

- WQBELs in NPDES permits under section 402, 33 U.S.C. 1342;
- Waterbody assessments and establishment of total maximum daily loads (TMDLs) under section 303(d), 33 U.S.C. 1313(d);
- Certifications of Federal licenses and permits under section 401, 33 U.S.C., 1341.

CWA section 303(c) directs states to adopt WQS for their waters subject to the CWA. WQS consist of designated uses of the waters, water quality criteria to protect those uses, and an antidegradation policy to maintain water quality (CWA section 303(c)(2)(A) and (d)(4)(B)). The EPA's regulation at 40 CFR 131.11(a)(1) provides that ''[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use [and] [f]or waters with multiple use designations, the criteria shall support the most sensitive use.''

States are required to review applicable WQS at least once every three years and, if appropriate, revise or adopt new WQS (CWA section 303(c)(1) and 40 CFR 131.20). Any new or revised WQS must be submitted to the EPA for review and approval or disapproval (CWA section 303(c)(2)(A) and (c)(3) and 40 CFR 131.20 and 131.21). Under CWA section 303(c)(4)(B), the Administrator is authorized to determine that a new or revised standard is necessary to meet CWA requirements.

Under CWA section 304(a), the EPA is required to periodically publish national water quality criteria recommendations for states to consider when adopting water quality criteria for particular pollutants to meet the CWA section 101(a)(2) goals. In establishing numeric criteria, states should adopt water quality criteria based on the EPA's CWA section 304(a) criteria, section 304(a) criteria modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)). CWA section 303(c)(2)(B) requires states to adopt numeric criteria for all toxic pollutants listed pursuant to CWA section 307(a)(1) for which the EPA has published CWA section 304(a) criteria, where the presence or discharge of those pollutants could reasonably be expected to interfere with maintaining designated uses.

B. Applicable Selenium Criteria in California

The EPA has promulgated selenium water quality criteria for various waterbodies in California. First, in 1992, the EPA promulgated selenium criteria for certain California waters as part of the *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance* at 57 FR 60848, December 22, 1992, (hereafter referred to as the National Toxics Rule or NTR),[1] and then again in 2000, as part of the *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California* at 65 FR 31681, May 18, 2000, (hereafter referred to as the California Toxics Rule or CTR).[2] In each case, the EPA promulgated the EPA's recommended aquatic life criteria values at the time. In addition to the NTR and CTR selenium criteria, California has also adopted site-specific acute and chronic selenium criteria (California uses the term ''objectives'' instead of criteria). The criteria that the EPA previously promulgated for California in the NTR,[3] together with the criteria promulgated in the CTR and California's site-specific objectives, established WQS for priority toxic pollutants for inland surface waters and enclosed bays and estuaries in California.

For a full summary of the applicable selenium criteria covered by the NTR, the CTR, and California site-specific selenium objectives, please refer to the preamble of the EPA's proposed rulemaking for this action, sections II.B and II.C (83 FR 64059, December 13, 2018). For a discussion on the scope of

[1] The NTR is codified at 40 CFR 131.36. *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-131#131.36*.

[2] The CTR is codified at 40 CFR 131.38. *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-D/part-131/subpart-D/section-131.38*.

[3] The CTR Criteria Table at 40 CFR 131.38(b)(1) includes all water quality criteria previously promulgated in the NTR, so that readers can find all Federally promulgated water quality criteria for California in one place. All criteria previously promulgated in the NTR are footnoted as such in the CTR.

California waters covered by this rule, please see section V. of this preamble.

C. California Toxics Rule and Endangered Species Act Consultation

As required by section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the EPA consulted with the U.S. Fish and Wildlife Service (FWS) and the U.S. National Marine Fisheries Service (NMFS) (collectively, the Services) concerning the EPA's proposed and final CTR. The EPA initiated consultation with the Services in 1994. In March 2000, the Services issued a final Joint Biological Opinion. The final Joint Biological Opinion [4] recorded commitments by the EPA to: (1) withhold promulgation of (*i.e.,* reserve) the EPA's proposed acute [5] freshwater aquatic life criterion for selenium in the final CTR; (2) revise the national CWA section 304(a) recommended acute and chronic aquatic life criteria for selenium; and (3) later update the acute and chronic aquatic life criteria for California consistent with the revised national CWA section 304(a) recommendations. As a result, in the May 2000 CTR, the EPA finalized the chronic freshwater selenium criterion [6] and the acute and chronic saltwater selenium criteria but did not finalize the acute freshwater selenium criterion.

D. Litigation

Section 303(c)(4)(B) of the CWA gives the EPA Administrator authority to promulgate water quality standards for a state where necessary to meet the requirements of CWA section 303. The EPA made an Administrator's determination under section 303(c)(4)(B) of the CWA, included in the 1997 proposed [7] and 2000 final CTR, that numeric criteria are necessary in California to meet the requirements of section 303(c)(2)(B) to protect the State's designated uses.[8] In 2013, two organizations filed a complaint against the EPA in the United States District Court for the Northern District of California. The complaint was based in part on the fact that the EPA had previously determined, in the CTR, that selenium criteria were necessary to implement section 303(c)(2)(B) of the CWA (62 FR 42160, August 5, 1997) and the work to update the reserved freshwater acute selenium criterion from the 2000 CTR had not yet been completed. In 2014, the EPA entered into a consent decree to resolve these claims (*Our Children's Earth Foundation and Ecological Rights Foundation* v. *U.S. Environmental Protection Agency, et al.,* 13-cv-2857 (N.D. Cal, August 22, 2014)).

Under the terms of the consent decree, the EPA committed to proposing selenium criteria for California fresh waters covered by the original CTR to protect aquatic life and aquatic-dependent wildlife by November 30, 2018. On November 29, 2018, the EPA satisfied this commitment when the Administrator of the EPA signed the proposed rulemaking to establish a selenium water quality criterion applicable to California that protects aquatic life and aquatic-dependent wildlife in certain waters of California. The consent decree also required that the EPA request to initiation of any necessary ESA section 7(a)(2) consultation with the Services on the proposed selenium criteria no later than nine months after the date the EPA proposed the criteria. The EPA satisfied this commitment by initiating ESA consultation with the Services on the proposed selenium criterion on August 12, 2019.

Further, under the consent decree, the EPA is required to finalize its proposed selenium criteria within six months of the later of the following: (1) the date of the EPA's conclusion (if any) that it will not seek ESA section 7(a)(2) consultation because some or all of the proposed selenium criteria have ''no effect'' on any listed ESA species or designated critical habitat; (2) the date of written concurrence from the Services with any EPA conclusion that some or all of the proposed selenium criteria are ''not likely to adversely affect'' listed ESA species or designated critical habitat; or (3) the date of the Services' Biological Opinion(s) concluding any formal consultation on the proposed selenium criteria.

E. Selenium and Sources of Selenium

Selenium is a naturally occurring, but relatively rare, element present in sedimentary rocks and soils. It is also present in the atmosphere as methyl derivatives of selenium. There are around 40 known selenium-containing minerals, some of which can have as much as 30% selenium, but all are rare and generally occur together with sulfides of metals such as copper, zinc, and lead.[9] The distribution of organic-enriched sedimentary rocks, black shales, petroleum source rocks, ore deposits, phosphorites, and coals, in which selenium typically co-occurs, is well characterized in the United States.[10] Two major anthropogenic (*i.e.,* human-caused) activities can cause selenium to become mobilized and introduced into aquatic systems. The first is extracting metals, minerals, and fossil fuels; the second is irrigation of selenium-rich soils. Once inorganic selenium is converted into a bioavailable form (*i.e.,* a form that can be absorbed into the body following skin contact, ingestion, or inhalation), it enters the food chain and can bioaccumulate (*i.e.,* can be taken up and retained by an aquatic organism from any surrounding media, *e.g.,* water, food, sediment).

Elevated selenium levels above what is nutritionally required in fish and other wildlife inhibit normal growth and reduce reproductive success through effects that lower embryo survival, most notably teratogenesis (*i.e.,* embryo/larval deformities) (see *2021 Revision to: Final Aquatic Life Ambient Water Quality Criteria for Selenium—Freshwater 2016,* US EPA, Office of Water, EPA 822–R–21–006, August 2021). The deformities associated with exposures to elevated selenium in fish may include skeletal, craniofacial, and fin deformities, and various forms of edema that result in mortality. Elevated selenium exposure in birds can reduce reproductive success including decreased fertility, reduced egg hatchability (embryo mortality), and increased incidence of deformities in embryos.

Scientific studies [11] indicate that selenium toxicity to aquatic life and

[4] Final Joint Biological Opinion dated March 24, 2000, from the National Marine Fisheries Service, Long Beach, California, and the U.S. Fish and Wildlife Service, Sacramento, California, concerning EPA's final rule for the Promulgation of Water Quality Standards: Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California (CTR).

[5] The proposed freshwater acute selenium criterion in the CTR was as follows: The CMC = l/[(f1/CMC1) + (f2/CMC2)] where f1 and f2 are the fractions of total selenium that are treated as selenite and selenate respectively, and f1 + f2 = 1. CMC1 and CMC2 are the CMCs for selenite and selenate, respectively, or 185.9 µg/L and 12.83 µg/L, respectively. This criterion was in the total recoverable form. CMC is the continuous maximum concentration.

[6] The final chronic criterion was based on the EPA's 1987 national CWA section 304(a) recommended criterion.

[7] Proposed California Toxics Rule, 62 FR 42160 (August 5, 1997).

[8] See the CTR preamble at section E.1., ''EPA is using section 303(c)(4)(B) as the legal basis for today's final rule.'' 65 FR 31687 (May 18, 2000).

[9] Emsley, John. October 2011. *Nature's Building Blocks: An A–Z Guide to the Elements,* 2nd Edition.

[10] Presser TS, Piper DZ, Bird KJ, Skorupa JP, Hamilton SJ, Detwiler Sj, Huebner MA. 2004. *The Phosphoria Formation: a model for forecasting global selenium sources to the environment.* In: JR Hein, editor. Life cycle of the phosphoria formation: From deposition to post-mining environment. New York (NY): Elsevier. P 299–319. See Figures 1 and 2.

[11] Scientific studies used in the development of this rulemaking can be found in this rule's docket,

aquatic-dependent wildlife is driven by diet (*i.e.,* the consumption of selenium-contaminated prey) rather than by direct exposure to dissolved selenium in the water column. Unlike other bioaccumulative contaminants, such as mercury, the single largest step in selenium accumulation in aquatic environments occurs at the base of the food web when algae and other particulate material take up selenium from water. The vulnerability of a species to selenium toxicity is determined by a number of factors, in addition to the amount of contaminated prey consumed. Those factors include a species' sensitivity to selenium, its population status, and the duration, timing, and life stage of exposure. In addition, the hydrologic conditions and water chemistry of a waterbody affect bioaccumulation; in general, slow-moving, calm waters or lentic waters enhance the production of bioavailable forms of selenium (selenite), while faster-moving waters or lotic waters limit selenium uptake by aquatic life and aquatic-dependent wildlife given the rapid movement and predominant form of selenium (selenate). The EPA considered these and other factors in determining the selenium criterion for California.

III. Final Freshwater Chronic Selenium Criterion

A. The EPA's Approach

In 2016, the EPA published a revised national CWA section 304(a) recommended chronic freshwater aquatic life criterion for selenium to better account for bioaccumulation through the food chain in different ecosystems, and published an erratum in 2021, *2021 Revision to: Final Aquatic Life Ambient Water Quality Criterion for Selenium—Freshwater 2016,* US EPA, Office of Water, EPA 822–R–21–006, August 2021.[12] For purposes of clarity in this preamble, all subsequent references to the EPA's current national CWA section 304(a) recommended chronic freshwater criterion for selenium refers to its 2021 published version. The recommended chronic freshwater criterion is comprised of four criterion elements, two of which are fish tissue concentrations and two of which are water column concentrations. The recommended elements are: (1) a fish egg-ovary element of 15.1 milligram per kilogram (mg/kg) dry weight; (2) a fish whole-body element of 8.5 mg/kg dry weight or a muscle element of 11.3 mg/kg dry weight; (3) a water column element of 3.1 µg/L in lotic aquatic systems and 1.5 µg/L in lentic aquatic systems; and (4) a water column intermittent exposure element derived from the chronic water column element to account for potential chronic effects from short-term exposures (one value for lentic and one value for lotic aquatic systems).

As stated previously, on November 29, 2018, the EPA Administrator signed the proposed rulemaking to establish a selenium water quality criterion that protects aquatic life and aquatic-dependent wildlife in certain fresh waters of California. The EPA proposed its recommended 2016 CWA section 304(a) selenium criterion for freshwater with two modifications to the criterion. First, the EPA proposed adding a bird tissue criterion element derived to protect aquatic-dependent wildlife to the EPA's national CWA section 304(a) selenium criterion. Second, the EPA proposed replacing the EPA's national CWA section 304(a) selenium monthly average exposure water column (lentic or lotic) criterion element (referred to as the default water column criterion element) with a performance-based approach (PBA) for translating a tissue criterion element into a corresponding water column criterion element on a site-specific basis and took comment on whether to keep the default water column criterion element, in addition to the PBA, in the final rule.

In this rule, the EPA considered the methodology and information used to derive the current national CWA section 304(a) recommended selenium criterion, additional information specific to aquatic-dependent wildlife in California, and the public comments and feedback the EPA received on the proposed rulemaking in order to ensure broad protection for both aquatic and aquatic-dependent species. The final freshwater chronic selenium criterion for certain waters in California adds a bird tissue criterion element to the national CWA section 304(a) selenium criterion, consistent with the proposed rulemaking, in addition to the PBA. The EPA also included the default water column criterion element from the EPA's national CWA section 304(a) selenium criterion, in addition to the PBA in the final rule. The PBA will allow the State to develop a site-specific water column element to be used instead of the default water column criterion element. For a further discussion of the EPA's final chronic freshwater selenium criterion and what the EPA considered in finalizing this rule, see section III.C of this preamble and also refer to the EPA's Response to Comments document in the public docket for this rule.

As mentioned previously, the chronic freshwater selenium criterion in this final rule will apply to California waters in a manner consistent with the CTR and the EPA's proposed rulemaking for this action (83 FR 64059, December 13, 2018).

The promulgated criterion establishes levels of selenium that protect California's aquatic life and aquatic-dependent wildlife designated uses (California uses the term ''beneficial uses'' instead of designated uses) for certain waters of California consistent with California's implementation of the CTR. California's applicable designated (beneficial) uses for the protection of aquatic life and aquatic-dependent wildlife are listed in table 1 of this preamble.

TABLE 1—APPLICABLE DESIGNATED (BENEFICIAL) USES FOR CALIFORNIA[13]

Use	Abbreviation	Definition
Warm Freshwater Habitat	WARM	Uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
Cold Freshwater Habitat	COLD	Uses of water that support cold water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
Migration of Aquatic Organisms	MIGR	Uses of water that support habitats necessary for migration or other temporary activities by aquatic organisms, such as anadromous fish.

as well as dockets EPA–HQ–OW–2004–0019 and EPA–HQ–OW–2015–0392.

[12] In 2021, the EPA identified that the following text was missing from the second sentence in footnote 4 in the selenium criterion table: ''When selenium inputs are increasing'' and issued an erratum. The EPA corrected footnote 4 to state: ''4. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data.''

TABLE 1—APPLICABLE DESIGNATED (BENEFICIAL) USES FOR CALIFORNIA [13]—Continued

Use	Abbreviation	Definition
Spawning, Reproduction, and/or Early Development.	SPWN	Uses of water that support high quality aquatic habitats suitable for reproduction and early development of fish.
Estuarine Habitat	EST	Uses of water that support estuarine ecosystems including, but not limited to, preservation or enhancement of estuarine habitats, vegetation, fish, shellfish, or wildlife (*e.g.*, estuarine mammals, waterfowl, shorebirds).
Wildlife Habitat	WILD	Uses of water that support terrestrial ecosystems including, but not limited to, preservation or enhancement of terrestrial habitats, vegetation, wildlife (*e.g.*, mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.
Rare, Threatened, or Endangered Species.	RARE	Uses of water that support habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or Federal law as rare, threatened or endangered.

B. Administrator's Determination of Necessity

As previously noted, in the 1997 proposed and 2000 final CTR, the EPA Administrator determined under CWA section 303(c)(4)(B) that selenium criteria were necessary in California. In the 1997 proposed CTR, the EPA proposed both acute and chronic freshwater selenium criteria. In the 2000 final CTR, the EPA promulgated a chronic freshwater selenium criterion; withheld promulgation of (*i.e.,* reserved) an acute freshwater selenium criterion; and committed to revising the national CWA section 304(a) recommended acute and chronic aquatic life criteria for selenium and later updating the acute and chronic aquatic life criteria for California consistent with the revised national CWA section 304(a) recommendations. The Services incorporated the EPA's commitments as Terms and Conditions in the final Joint Biological Opinion for the CTR.

In November 2018, the EPA proposed a revised chronic selenium criterion based on the EPA's current national CWA section 304(a) recommended criterion for selenium, which only includes a chronic criterion. The EPA's current national CWA section 304(a) recommendation does not include a separate acute criterion because selenium is bioaccumulative and toxicity primarily occurs through dietary exposure. Although selenium may cause acute toxicity at high concentrations, the most harmful effect on aquatic organisms is due to its bioaccumulative properties; these chronic effects occur at lower concentrations of selenium in aquatic organisms than acute effects. In addition, as discussed further in section III.C of this preamble, application of the intermittent exposure criterion element (that the EPA is promulgating as part of the chronic criterion) to single day, high exposure events will provide protection from the most important selenium toxicity effect, reproductive toxicity, by protecting against selenium bioaccumulation in the aquatic ecosystem resulting from short-term, high exposure events. Since the time of the EPA's proposed rulemaking in November 2018, the EPA is not aware of any significant scientific updates to alter the scientific basis underlying the EPA's current national CWA section 304(a) recommended freshwater chronic selenium criterion. As a result, the EPA is not including a separate freshwater acute selenium criterion.

Accordingly, promulgation of the freshwater chronic selenium criterion in this rule completes the EPA's action pursuant to the Administrator's Determination as it pertains to selenium criteria, as provided in the 1997 and 2000 preambles to the CTR.

In addition, this promulgation satisfies the Services' Term and Condition included in the final Joint Biological Opinion for the CTR to update the selenium criterion for California consistent with the current national CWA section 304(a) recommendations (see section II.C. of this preamble). For more information about the ESA consultation completed for this final rule, see section IV. of this preamble.

C. Final Chronic Selenium Criterion for California's Fresh Waters

In this final rule, the EPA is promulgating its current national CWA section 304(a) recommended chronic selenium criterion for certain fresh waters in California (including the default water column criterion element), with the addition of a bird tissue criterion element and a performance-based approach (PBA) [14] for translating a tissue criterion element into a corresponding water column criterion element on a site-specific basis. In its proposed rulemaking, the EPA solicited comment on whether to replace the default water column criterion element from the Agency's 2016 CWA section 304(a) selenium criterion with the PBA, replace the PBA with the default water column criterion element from the Agency's 2016 CWA section 304(a) selenium criterion, or include both. As discussed further in this section and in the EPA's Response to Comments document in the public docket for this rule, the EPA is including both the default water column criterion element and the PBA in its promulgation of the chronic criterion; a site-specific water column value developed using the PBA may be used in place of the default (lentic or lotic) water column criterion element.

The final freshwater chronic selenium criterion for California is depicted in table 2 of this preamble.

In the proposed rulemaking, the EPA solicited comment on two potential criteria structures: (1) one criterion that protects both the applicable aquatic life and aquatic-dependent wildlife designated uses; and (2) two separate criteria with one intended to protect the applicable aquatic life designated uses and one intended to protect the applicable aquatic-dependent wildlife designated uses. Most commenters requested that the EPA keep the proposed option of one criterion.

[13] Refer to document titled ''Applicable Designated (Beneficial) Uses for California,'' in the docket associated with this rulemaking, to find designated uses captured in the California Regional Water Quality Control Boards' Water Quality Control Plans (*i.e.,* Regional Boards' Basin Plans).

[14] A *performance-based approach* relies on the state or authorized Tribe adopting a process (*i.e.,* a criterion derivation methodology, with associated implementation procedures) rather than a specific outcome (*e.g.,* numeric criterion or concentration of a pollutant) in its water quality standards regulation. In instances where the EPA promulgates a water quality standard (including a performance-based approach) for a state or authorized Tribe, the EPA is held to the same policies, procedures, analyses, and public participation requirements for that water quality standard as the state or authorized Tribe. See 40 CFR 131.22(c). The concept of a *performance-based approach* was first described in the **Federal Register** document *EPA Review and Approval of State and Tribal Water Quality Standards—Final Rule* (65 FR 24641–24653; April 27, 2000).

After considering comments, the EPA is finalizing the rule as proposed, meaning that one criterion (with multiple criterion elements as shown in table 2 of this preamble) will be used to protect both aquatic life and aquatic-dependent wildlife designated uses in the waters covered by this rule. The one criterion consists of the following criterion elements: fish egg-ovary tissue, fish muscle or whole-body tissue, bird egg tissue, default water column (lentic and lotic), intermittent exposure water column, and a PBA for translating the tissue criterion elements into corresponding water column criterion elements on a site-specific basis.

The tissue criterion elements consist of (1) a fish egg-ovary criterion element of 15.1 mg/kg dry weight, (2) a fish whole-body criterion element of 8.5 mg/kg dry weight or a fish muscle criterion element of 11.3 mg/kg dry weight, and (3) a bird egg criterion element of 11.2 mg/kg dry weight. The fish egg-ovary tissue (from which all other fish tissue elements were derived) and bird egg tissue criterion elements were developed to protect aquatic and aquatic-dependent wildlife populations from impacts caused by selenium: they reflect biological uptake of selenium through diet, which is the predominant pathway for selenium toxicity, and are most predictive of the observed biological endpoint of concern, reproductive toxicity.

The water column criterion elements consist of (1) the default water column criterion element for lentic waters, 1.5 µg/L, or for lotic waters, 3.1 µg/L and (2) the intermittent exposure water column criterion element. In addition to the default water column criterion element, EPA is also promulgating the PBA *Method for Translating Selenium Tissue Criterion Elements into Site-specific Water Column Criterion Elements for California, Version 2, December 2024,* which is available in the docket for this rulemaking and incorporated by reference as part of this rule.

The chronic selenium criterion applies to the entire aquatic community, including aquatic-dependent wildlife. Based on the analysis in the accompanying Technical Support Document (TSD) to this rule (*FINAL Aquatic Life and Aquatic-Dependent Wildlife Selenium Water Quality Criterion for Freshwaters of California (December 2024)*) and the EPA's previous work (*2021 Revision to: Final Aquatic Life Ambient Water Quality Criterion for Selenium—Freshwater 2016,* US EPA, Office of Water, EPA 822–R–21–006, August 2021), as well as currently available data, fish and birds are considered the most sensitive aquatic and aquatic-dependent taxa to selenium effects, respectively.

The available data indicate that applying the criterion in table 2 of this preamble would protect aquatic life and aquatic-dependent wildlife from the toxic effects of selenium, recognizing that the bird tissue criterion element is independently applicable from and equivalent to the fish tissue criterion elements; the fish egg-ovary criterion element supersedes all other fish tissue elements; the fish tissue criterion elements (egg-ovary, whole-body, and/or muscle) supersede water column criterion elements for aquatic life when fish tissue is measured; and the bird tissue criterion element supersedes water column criterion elements for aquatic-dependent wildlife when bird egg tissue is measured. This hierarchy reflects the fact that fish and bird tissue concentrations provide the most robust and direct information on potential selenium effects in fish and birds. See section III.D Implementation of the Final Chronic Selenium Criterion in California of this preamble for the discussion regarding implementation of the final chronic selenium criterion and one exception to the hierarchy described above when selenium inputs are increasing.

The EPA is promulgating the following chronic criterion in new paragraph (b)(1)(i) of 40 CFR 131.38. The EPA is also making revisions to footnote q in the criteria table in paragraph (b)(1) and clarifying edits regarding the applicability of this criterion in paragraphs (c)(3)(ii) and (iii). The EPA is not amending or revising the contents of the table in (b)(1) and language in 40 CFR 131.38, except as specified in the preceding two sentences.

Table 2: California Freshwater Selenium Ambient Chronic Water Quality Criterion for Protection of Aquatic Life and Aquatic-Dependent Wildlife

Media Type	Bird Tissue	Fish Tissue[1]		Water Column[4]	
Criterion Element	**Bird Egg[2]**	**Egg-Ovary[2]**	**Fish Whole-Body or Muscle[3]**	**Monthly Average Exposure[5]**	**Intermittent Exposure[6]**
Magnitude	11.2 mg/kg dw	15.1 mg/kg dw	8.5 mg/kg dw whole-body or 11.3 mg/kg dw muscle (skinless, boneless filet)	1.5 µg/L in lentic aquatic systems 3.1 µg/L in lotic aquatic systems	$WQC_{int} = \frac{WQC_{30-day} - C_{bkgrnd}(1 - f_{int})}{f_{int}}$
Duration	Instantaneous measurement[7]	Instantaneous measurement[7]	Instantaneous measurement[7]	30 days	Number of days/month with an elevated concentration
Frequency	Not to be exceeded	Not to be exceeded	Not to be exceeded	Not more than once in three years on average	Not more than once in three years on average

1. Fish tissue criterion elements are expressed as steady-state.
2. Fish egg-ovary supersedes any whole-body, muscle, or water column criterion elements for aquatic life when fish egg-ovary are measured, except as noted in footnote 4. Bird egg supersedes water column criterion elements for aquatic-dependent wildlife when bird eggs are measured, except as noted in footnote 4. The bird tissue criterion element is independently applicable from and equivalent to the fish tissue criterion elements.
3. Fish whole-body or muscle tissue supersedes the water column criterion elements when both fish tissue and water concentrations are measured, except as noted in footnote 4.
4. Water column criterion elements are based on dissolved total selenium in water and are derived from fish tissue and bird tissue criterion elements via bioaccumulation modeling. When selenium inputs are increasing, water column criterion elements are the applicable criterion elements in the absence of steady-state condition fish tissue or bird tissue data.
5. The water column criterion element, which applies independently to the respective aquatic life and aquatic-dependent wildlife uses, is applicable for all CWA purposes and consists of a water column value of 1.5 µg/L in lentic aquatic systems and 3.1 µg/L in lotic aquatic systems unless or until a site-specific water column criterion element is derived for a particular waterbody following the methodology described in *Method for Translating Selenium Tissue Criterion Elements into Site-specific Water Column Criterion Elements for California, Version 2, December 2024*. This publication is incorporated by reference into this section with the approval of the Director of the *Federal Register* under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available at EPA, OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20004; phone: (202) 566-2426; website: *https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california*. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.
6. Where $WQC_{30\text{-}day}$ is the applicable water column monthly criterion element, C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥ 0.033 (corresponding to 1 day).
7. Fish tissue and bird tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in bird or fish population(s) at a given site.

Performance-Based Approach (PBA) for Translating Tissue Criterion Elements to Site-Specific Water Column Criterion Elements

As part of the criterion depicted in table 2 of this preamble, the EPA is incorporating by reference the PBA, *Method for Translating Selenium Tissue Criterion Elements into Site-specific Water Column Criterion Elements for California, Version 2, December 2024.* The PBA is a methodology that the State may use to translate the bird and fish tissue criterion elements into water column criterion elements on a site-specific basis.

If the State chooses to use the PBA, the State will coordinate with the EPA at the beginning of the process. The PBA is itself incorporated by reference into this rule and thus is part of the applicable WQS that the EPA is promulgating. As such, California is not required to adopt and submit the outcomes that result from using the PBA (*i.e.,* water column criterion elements for site-specific waterbodies) to the EPA for CWA section 303(c) review. In this rule, the EPA is promulgating the PBA as a scientifically defensible methodology that is sufficiently detailed and has suitable safeguards to ensure predictable, repeatable outcomes that will protect California's applicable beneficial uses. If California chooses to use the PBA for a particular site, each resulting site-specific water column criterion element would be applicable for CWA purposes, without the need for separate EPA approval under CWA section 303(c).

The PBA provides two methodologies for deriving a site-specific water column criterion element: (1) the mechanistic modeling approach; and (2) the empirical bioaccumulation factor (BAF) approach:

(1) The mechanistic modeling approach uses scientific knowledge of the physical and chemical processes underlying bioaccumulation to establish a relationship between the concentrations of selenium in the water column and the concentration of selenium in the tissue of aquatic and aquatic-dependent organisms. This approach enables formulation of site-specific models of trophic transfer of selenium through aquatic food webs and translation of the tissue elements into an equivalent site-specific water column element. It is also the approach the EPA used to develop the national CWA section 304(a) recommended selenium water column criterion elements.

(2) The empirical BAF approach establishes a site-specific relationship between water column selenium concentrations and fish or bird tissue selenium concentrations by measuring both directly and using the relationship between the concentrations to determine a site-specific water column criterion element.

As stated in footnote 5 of criterion, the default water column criterion element, consisting of a water column value of 1.5 µg/L dissolved total selenium in lentic aquatic systems and 3.1 µg/L dissolved total selenium in lotic aquatic systems, applies for all CWA purposes according to the hierarchy of the criterion, unless a site-specific water column criterion element is derived following the PBA.

If California decides to use the PBA to translate the applicable fish tissue or bird tissue criterion elements into site-specific water column criterion elements, those translated values would be applicable for, and protective of, the use for which the translation was completed. For example, if California used the PBA to translate the fish tissue criterion element into a water column criterion element, that water column criterion element would protect aquatic life; if California used the PBA to translate the bird tissue criterion element into a water column criterion element, that water column criterion element would protect aquatic-dependent wildlife.

The EPA looks forward to coordinating and working with the State to ensure consistency with the PBA methodology before implementation in other CWA programs. Importantly, for public transparency, the EPA recommends California maintain a list of the resulting site-specific water column criterion elements. The EPA also recommends that California make its analyses and the underlying data used for each site-specific water column derivation available on a publicly accessible State website.

As with other criteria, the State maintains discretion to adopt new or revised site-specific criteria and submit them to the EPA in accordance with CWA section 303(c) and EPA's implementing regulations at 40 CFR part 131. This could arise in the context of an entirely different criterion, an alternative water column criterion element, or an alternative tissue to water column derivation methodology. Please refer to section VI, Conditions When Federal Standards Would Be Withdrawn of this preamble for a discussion regarding the applicability of California-adopted, EPA-approved WQS in light of this Federal promulgation.

If the State chooses not to follow the PBA as prescribed, the State would need to adopt and submit site-specific water column criterion elements to the EPA for CWA section 303(c) review and approval in accordance with the procedures at 40 CFR part 131 in order to rely on them as applicable WQS for other CWA programs such as the TMDL and NPDES permitting programs. This is because the new value would not derive from or comply with applicable WQS (see 40 CFR 122.44(d)).[15]

In the proposed rulemaking, the EPA took comment on whether the national CWA section 304(a) recommended water column criterion element (lentic and lotic) should be included as a default, in addition to or in place of the PBA, in the final selenium criterion. Most commenters supported including the PBA in the final rule, and some requested that the default water column criterion element not be included in the final rule. However, several comments highlighted implementation concerns, such as gaps in protection before the PBA can be used to develop site-specific water column criterion elements, anticipated burdens on industry to rely on the PBA to derive site-specific water column criterion elements, and new discharger considerations that could be mitigated by including the default water column criterion element, in addition to the PBA.

In consideration of these public comments and to maintain consistency with the EPA's latest scientific recommendation to ensure protection of aquatic life and aquatic-dependent wildlife from exposure to toxic levels of selenium, as articulated in the EPA's current national CWA section 304(a) recommended freshwater aquatic life criterion for selenium and the TSD accompanying this final rule, the EPA decided to include the default water column criterion element as part of the California selenium criterion for the final rule, in addition to the PBA. This will ensure protection from excessive selenium in certain waters in California when tissue data are unavailable. Specifically, water column data and criterion elements can be applied for CWA implementation purposes when tissue data are unavailable. When all of the criterion elements are applied together, the tissue and water column criterion elements protect aquatic life and aquatic-dependent wildlife from the chronic effects of exposure to selenium in waterbodies. This will also help ensure that California is able to implement the Federally promulgated selenium criterion as soon as it is effective under the CWA.

The EPA also specifically solicited comment on whether it would be

[15] 82 FR 25628, April 27, 2000.

appropriate to include a method for a larger scale (*e.g.,* ecoregional or statewide) water column translation from fish or bird egg tissue in the PBA, and if so, what methods are available and appropriate for this large-scale translation. Most commenters agreed that a larger-scale translation method was not appropriate, finding the PBA was more appropriate and scientifically defensible on a waterbody site-specific scale, given the highly localized conditions that affect selenium bioaccumulation. After taking into consideration all comments, EPA decided to keep the allowable application of the PBA limited to an individual waterbody or waterbody segment. Developing a water column translation for a larger geographic area involves additional considerations that are not included in the PBA. These additional considerations are likely unique to the geographic area and would be better addressed through an individual site-specific criteria process by the State. California retains the ability to develop a site-specific criterion for a larger site, such as a watershed or ecoregion. Any such state-adopted, site-specific criterion must be submitted to the EPA for review and approval pursuant to CWA section 303(c) and the EPA's implementing regulations at 40 CFR part 131 to be effective for CWA purposes.

The EPA intends for the PBA to be severable from the remainder of the final selenium criterion in this rule. As explained above, the EPA has chosen to promulgate the PBA as part of the criterion, providing one means for the State to translate the bird and fish tissue criterion elements into water column criterion elements on a site-specific basis. The EPA included the PBA in this final rule to provide an efficient means to account for site-specific information to inform the applicable water column criterion element. The removal of the PBA would not change how the overall rule functions. The final selenium criterion protects aquatic life and aquatic-dependent wildlife through the applicable tissue and water column criterion elements for all the specified waters in California. In contrast, as discussed above, California's use of the PBA in the final rule is optional and not mandatory. As such, the tissue and water column criterion elements apply independently of the PBA and function separately to meet the requirements of CWA section 303(c). In the absence of the PBA, the other criterion elements of the final selenium criterion will still protect the designated uses for aquatic life and aquatic-dependent wildlife in accordance with CWA section 303(c) and the EPA's implementing regulations. In other words, the final selenium criterion, with the criterion elements absent the PBA, still functions as the applicable criterion to protect the designated uses. Further, California could pursue other options in lieu of using the PBA to adopt site-specific selenium criteria. For example, as with other criteria, the State maintains discretion to adopt new or revised site-specific criteria and submit them to the EPA in accordance with CWA section 303(c) and the EPA's implementing regulations at 40 CFR part 131. Accordingly, the EPA intends this portion of the rule to be severable from the remainder of the rule.

Intermittent Exposure Criterion Element

Although selenium may cause acute toxicity at high concentrations (*i.e.,* toxicity from a brief but highly elevated concentration of selenium in the water), chronic dietary exposure poses the highest risk to aquatic life and aquatic-dependent wildlife. Chronic toxicity occurs primarily through maternal transfer of selenium to eggs and causes subsequent reproductive effects, such as larval and embryo structural deformity, edema, and mortality. Because chronic effects of selenium are observed at lower concentrations than acute effects, the chronic criterion is expected to protect aquatic and aquatic-dependent communities from any potential acute effects of selenium. However, some high concentration, short-term exposures could be detrimental by causing significant long-term, residual, bioaccumulative effects (*i.e.,* by the introduction of elevated selenium load into the system). Therefore, the EPA is also promulgating the intermittent exposure criterion element within the chronic criterion to prevent long-term detrimental effects from these high concentration, short-term exposures.

The EPA's intermittent exposure criterion element is derived mathematically from either the default water column criterion element or the performance-based, site-specific monthly water column criterion element, using the equation shown in Table 2 of this preamble. The equation expresses the intermittent exposure water column criterion element in terms of the 30-day default water column criterion element, as appropriate, while accounting for the fraction in days of any 30-day period the intermittent spikes occur and for the background concentration occurring during the remaining time. The intermittent exposure criterion element calculation is consistent with the EPA's current national CWA section 304(a) recommended chronic freshwater aquatic life criterion for selenium. It is meant to be used in situations where a noncontinuous discharge containing selenium is present in the waterbody of interest.

D. Implementation of the Final Chronic Selenium Criterion in California

Identification of Impaired Waters and TMDL Development

WQS provide the basis for identifying impaired waters (waters not attaining the applicable WQS) and developing TMDLs pursuant to CWA section 303(d). With the promulgation of this multi-element criterion, all criterion elements will be available for assessment purposes. If multiple types of data are collected at a site, they will be used for implementation purposes according to the hierarchical structure of the selenium criterion. For purposes of assessing attainment of the WQS based on the criterion and as mentioned in section III.C of this preamble, the bird tissue criterion element is independently applicable from the fish tissue criterion elements. Specifically, if the bird tissue criterion element is exceeded, the criterion is not being attained for the applicable aquatic-dependent wildlife designated uses, and if the fish tissue criterion element is exceeded (using the hierarchy for fish tissue), the criterion is not being attained for the applicable aquatic life designated uses. For aquatic-dependent wildlife, the bird egg tissue element supersedes the water column elements if both are measured. For aquatic life, the fish egg-ovary tissue criterion element supersedes the muscle or whole-body criterion elements and all fish tissue criterion elements supersede water column criterion elements. However, there is one exception to this hierarchy. When selenium is increasing due to new inputs, footnote 4 of the criterion specifies that the water column criterion elements must be used when steady-state fish or bird tissue data are not available for each respective use, as discussed further below. Also, the default water column criterion element applies for CWA purposes for each respective designated use unless site-specific water column criterion elements are derived following the methodology described in the PBA, or site-specific water column criterion elements that do not follow the methodology prescribed by the PBA are adopted by California and approved by the EPA pursuant to CWA section 303(c) and the EPA's implementing regulations.

Selenium concentrations in fish and bird tissue are primarily a result of selenium bioaccumulation via dietary exposure. In both the EPA's current national CWA section 304(a) recommended aquatic life criterion for selenium and this California selenium rulemaking, steady-state refers to conditions where sufficient time has passed after the introduction of a new or increased input of selenium into a waterbody or watershed of a waterbody such that fish tissue concentrations of selenium are no longer increasing in the long-term average or multi-year average. For a tissue measurement to be meaningful, the water from which the sample is taken should not be experiencing or have recently experienced new inputs of selenium. When there are new selenium inputs to a waterbody, fish tissue data and bird tissue data may not fully represent the potential effects on the aquatic ecosystem, making the use of the water column criterion elements more appropriate to protect the entire aquatic ecosystem. New inputs are defined as new anthropogenic activities resulting in the release of selenium into a lentic or lotic aquatic system.[16] These ''new inputs'' are both new and increased inputs of selenium and are referring to the release of a substantial amount of additional selenium from either anthropogenic point or nonpoint sources into a waterbody or watershed. New inputs do not refer to seasonal variability of selenium that occurs naturally within a system (*e.g.,* spring run-off events or precipitation-driven pulses) or *de minimis* inputs to a watershed or waterbody.[17]

The water column criterion elements take precedence over the fish tissue criterion elements and the bird egg tissue criterion element until tissue data have returned to a steady-state condition after a new input of selenium. In the interim, in systems with new inputs, the EPA recommends California sample tissue and water and use site-specific data to gain a better understanding of the selenium bioaccumulation dynamics in a receiving water and to determine if and when steady-state conditions have been reached.

California has flexibility to determine how to evaluate individual and composite samples for each taxon. Tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in fish or birds at a given site. This final selenium criterion provides California with flexibility in how the State can interpret a discrete bird egg or fish tissue sample to represent a given species' population at a site. Generally, fish and bird egg tissue samples collected to calculate average tissue concentrations (often in composites) for a species at a site are collected during one sampling event, or over a short interval due to logistical constraints and the cost for obtaining samples. The State should clearly describe its decision-making process in its assessment methodology.

NPDES Permitting

Under the CWA, WQS are used to derive WQBELs in NPDES permits for point source discharges, thereby limiting the amount of pollutants that may be discharged into a waterbody to attain and maintain its designated uses. The EPA is promulgating the default water column criterion element and the option for California to use the PBA to translate tissue criterion elements into site-specific water column criterion elements, which can be used to facilitate implementation, *e.g.,* NPDES permitting. However, these water column criterion elements would not prevent California from also using the tissue criterion elements for monitoring and regulating pollutant discharges where appropriate.

As with assessments, all criterion elements are available for NPDES permitting. When multiple data types are available for making permitting decisions, the hierarchy of the criterion will determine which data type will take precedence. In addition, as described above, when selenium is increasing due to new inputs, footnote 4 of the criterion specifies that the water column criterion elements must be used when steady-state fish or bird tissue data are not available.

When implementing the selenium criterion under the NPDES permits program, California may need to establish additional implementation procedures due to the unique components of the selenium criterion. Where California uses a water column criterion element only (as opposed to using both the water column and fish tissue or bird tissue criterion elements) for conducting reasonable potential determinations and establishing WQBELs per 40 CFR 122.44(d), it may be appropriate for the State to evaluate existing implementation procedures for other water column aquatic life criteria. However, if California also decides to use the selenium fish tissue criterion elements and bird tissue criterion elements for NPDES permitting purposes, additional State WQS implementation procedures will likely be needed to determine the need for and development of WQBELs necessary to ensure that the tissue criterion element(s) are met.

E. Incorporation by Reference

The regulatory text incorporates one EPA document by reference, specifically, the EPA's *Method for Translating Selenium Tissue Criterion Elements into Site-specific Water Column Criterion Elements for California, Version 2, December 2024,* discussed in section III.C of this preamble. The EPA has made, and will continue to make, this document available electronically at its website (*https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california*) and through *www.regulations.gov* at the docket associated with this rulemaking.

IV. Endangered Species Act

Section 7(a)(2) of the ESA requires that each Federal agency ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. For this rule, the EPA transmitted a Biological Evaluation to NMFS and FWS on November 23, 2022.

On June 21, 2024, the EPA received a final Biological Opinion from FWS that determined that the EPA's action is likely to adversely affect but will not jeopardize the continued existence of bonytail, razorback sucker, Santa Ana sucker, tidewater goby, unarmored threespine stickleback, arroyo toad, California red-legged frog, foothill yellow-legged frog, light-footed Ridgway's rail, Yuma Ridgway's rail, and California least tern. FWS also concurred with the EPA that the action may affect but is not likely to adversely affect the other Federally listed species and designated critical habitats for all species that were included in the consultation, including the longfin smelt for which the FWS provided supplemental concurrence with the EPA on October 29, 2024, that the action may

[16] USEPA. 2021. 2021 Revision to: Aquatic Life Ambient Water Quality Criterion for Selenium–Freshwater 2016. EPA 822–R–21–006. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *https://www.epa.gov/system/files/documents/2021-08/selenium-freshwater2016-2021-revision.pdf.*

[17] USEPA. 2024. Technical Support for Adopting and Implementing the EPA's 2016 Selenium Criterion in Water Quality Standards. EPA–820–R–24–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *https://www.epa.gov/system/files/documents/2024-03/selenium-adopting-tsd.pdf.*

affect but is not likely to adversely affect that species.[18]

On August 28, 2024, the EPA received a final Biological Opinion from NMFS that determined that the EPA's action is likely to adversely affect but will not jeopardize the continued existence of Central California Coast coho salmon, Southern Oregon/Northern California Coast coho salmon, Southern California steelhead, Central Valley steelhead, Northern California steelhead, Central California Coast steelhead, South-Central California Coast steelhead, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central California Coast Chinook salmon, the Southern distinct population segment of North American green sturgeon, nor is the proposed action likely to result in the destruction or adverse modification of critical habitat for these species. NMFS also concurred with the EPA that the action may affect but is not likely to adversely affect the other Federally listed species and the designated critical habitat for the other species that were included in the consultation.

The EPA's receipt of these final Biological Opinions and concurrences from the Services concludes the consultation for this rule under ESA section 7(a)(2). Documents associated with this ESA consultation are available in the docket associated with this rule (Docket ID: EPA–HQ–OW–2018–0056).

V. Applicability of the EPA-Promulgated Water Quality Standards

This final rule for a chronic selenium freshwater criterion applies to certain waters of California in a manner consistent with the CTR where the protection of aquatic life and aquatic-dependent wildlife are designated uses, which includes the waters of the San Luis National Wildlife Refuge and the Los Banos State Wildlife Refuge.

The final rule does not apply to California waters where site-specific selenium criteria have been adopted, nor does it apply to California waters where selenium criteria have been promulgated in the NTR. In other words, this final rule does not apply to waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta, the San Joaquin River from Sack Dam to Vernalis, Mud Slough (north), Salt Slough, or constructed and reconstructed water supply channels in the Grassland watershed listed in Appendix 40 of the Central Valley Regional Water Quality Control Board's Basin Plan because these waters have applicable selenium criteria from the NTR and/or approved Central Valley Regional Water Quality Control Board site-specific objectives.

Lastly, the final rule does not apply to surface waters that are tributaries to the Salton Sea because California adopted, and EPA-approved, site-specific water quality objectives for these waters.

As noted previously, this action adds clarifying language to the regulatory provisions regarding applicability of the CTR based on the salinity level of the waterbody in paragraphs (c)(3)(ii) and (iii) of 40 CFR 131.38. The added language is not intended to affect the substance of those applicability provisions.

The State of California has nine Regional Water Quality Control Boards (Regional Boards), each located in and overseeing different areas of the State. Each Regional Board has a regional water quality control plan (Basin Plan) that sets forth EPA-approved designated (beneficial) uses for the waterbodies it oversees. The criterion will become the applicable CWA-effective criterion for CWA implementation purposes by each of the Regional Boards after the effective date of this rule (*i.e.,* 30 days after the date of publication of this rule in the **Federal Register**).

VI. Conditions When Federal Standards Would Be Withdrawn

Under the CWA, Congress gave states the primary responsibility for developing and adopting WQS for their waters (CWA section 303(a) through (c)). Although the EPA is promulgating a selenium criterion for the protection of aquatic life and aquatic-dependent wildlife for certain waters of California, California continues to have the option to adopt and submit to the EPA selenium criteria for the State's waters consistent with CWA section 303(c) and the EPA's implementing regulations at 40 CFR part 131.

If California adopts and submits selenium criteria for the protection of aquatic and aquatic-dependent wildlife for California (fresh water and/or salt water), the EPA will approve California's criteria if those criteria meet the requirements of section 303(c) of the CWA and the EPA's implementing regulation at 40 CFR part 131. If the EPA's Federally promulgated criteria are more stringent than the State's criteria, the EPA's Federally promulgated criteria are and will be the applicable water quality standard for purposes of the CWA until the EPA withdraws those Federally promulgated standards. The EPA would expeditiously undertake such a rulemaking to withdraw the Federal criteria if and when California adopts and the EPA approves corresponding criteria. After the EPA's withdrawal of Federally promulgated criteria, the State's EPA-approved criteria would become the applicable criteria for CWA purposes. If the State's adopted criteria are as stringent or more stringent than the Federally promulgated criteria, then the State's criteria would become the CWA applicable WQS upon the EPA's approval (40 CFR 131.21(c)).

VII. Alternative Regulatory Approaches

The EPA's WQS regulation at 40 CFR part 131 provides several tools that California has available to use at its discretion when implementing or deciding how to implement this selenium criterion. Among other things, the EPA's regulation: (1) specifies how states and authorized Tribes[19] establish, modify or remove designated uses; (2) specifies the requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions; (3) specifies the requirements for states and authorized Tribes to adopt WQS variances that provide time to achieve the applicable WQS; and (4) allows states and authorized Tribes to authorize the use of compliance schedules in NPDES permits to meet WQBELs derived from the applicable WQS. Each of these approaches are discussed in more detail in the next sections of this preamble.

Designated Uses

The EPA's action applies to certain waters of California where the protection of aquatic life and aquatic-dependent wildlife are designated uses. The regulation at 40 CFR 131.10 provides information on establishing, modifying, and removing designated uses. If California removes designated uses such that no aquatic life or aquatic-dependent wildlife uses apply to any particular waterbody or waterbody segment affected by this rule and adopts the highest attainable use,[20] the State

[18] FWS proposed to list the San Francisco Bay-Delta distinct population segment of longfin smelt as an endangered species on October 7, 2022 (87 FR 60957) and finalized the rule on July 30, 2024 (89 FR 61029) with an effective date of August 29, 2024. The San Francisco Bay-Delta distinct population segment of longfin smelt had not been identified as part of the consultation in the EPA's biological evaluation or the FWS's Biological Opinion that the EPA received on June 21,2024, before the final rule was signed. As such, the EPA worked with FWS to address this species listing prior to signing the final rule.

[19] For purposes of this rule, an Indian Tribe that obtains EPA approval to administer a WQS program under CWA section 303(c) for its reservation is referred to as an ''authorized Tribe.''

[20] If a state or authorized Tribe adopts a new or revised WQS based on a use attainability analysis,

must also adopt criteria to protect the newly designated highest attainable use consistent with 40 CFR 131.11. It is possible that criteria other than the Federally promulgated criteria would protect the highest attainable use. If the EPA were to find removal or modification of the designated use and the adoption of the highest attainable use and criteria to protect that use is consistent with CWA section 303(c) and the implementing regulations at 40 CFR part 131, the EPA would approve the revised WQS. The EPA would then undertake a rulemaking to withdraw the corresponding Federally promulgated WQS for the relevant water(s).

Site-Specific Criteria

The regulation at 40 CFR 131.11 specifies requirements for modifying water quality criteria to reflect site-specific conditions. In the context of this rulemaking, a site-specific criterion (SSC) is an alternative value to the Federal selenium criterion that would be applied on an area-wide or waterbody-specific basis that meets the regulatory test of protecting the designated uses, being scientifically defensible, and ensuring the protection and maintenance of downstream WQS. In this context, as discussed in section III.C of this preamble, SSC are different than a site-specific water column criterion element developed through the PBA incorporated by reference in this final rule. A SSC may be more or less stringent than the otherwise applicable Federal criterion. A SSC may be called for when further scientific data and analyses indicate that a different selenium concentration (*e.g.,* a different fish tissue or bird tissue criterion element) may be needed to protect the aquatic life and aquatic-dependent wildlife-related designated uses in a particular waterbody or portion of a waterbody. Any such state-adopted SSC will need to be submitted to the EPA for review and approval pursuant to CWA section 303(c) and the EPA's implementing regulation at 40 CFR part 131.

WQS Variances

California's WQS provide sufficient authority to apply WQS variances when implementing a Federally promulgated criterion for selenium, as long as such WQS variances are adopted consistent with 40 CFR 131.14 and submitted to the EPA for review and approval under CWA section 303(c). The EPA's regulation at 40 CFR 131.3(o) defines a WQS variance as a time-limited designated use and criterion, for a specific pollutant or water quality parameter, that reflects the highest attainable condition during the term of the WQS variance. WQS variances adopted in accordance with 40 CFR 131.14 (including a public hearing consistent with 40 CFR 131.20(b)) provide a flexible but defined pathway for states and authorized Tribes to meet their NPDES permit obligations by allowing dischargers the time they need (as demonstrated by the state or authorized Tribe) to make incremental progress toward meeting WQS that are not immediately attainable but may be in the future. When adopting a WQS variance, states and authorized Tribes specify the interim requirements of the WQS variance by identifying a quantitative expression that reflects the highest attainable condition during the term of the WQS variance, establishing the term of the WQS variance, and describing the pollutant control activities expected to occur over the specified term of the WQS variance.

WQS variances help states and authorized Tribes focus on improving water quality, rather than pursuing a downgrade of the underlying water quality goals through modification or removal of a designated use, as a WQS variance cannot lower currently attained water quality. NPDES permit limits can be written to comply with the WQS variance rather than the underlying WQS for the specified term of the WQS variance. If dischargers are still unable to meet the WQBELs derived from the applicable WQS once a WQS variance term is complete, the state or authorized Tribe may adopt a subsequent WQS variance if adopted consistent with 40 CFR 131.14.

Compliance Schedules

The EPA's regulation at 40 CFR 122.47 allows permitting authorities to include compliance schedules in their NPDES permits, when appropriate and where authorized by the state or authorized Tribe. The EPA's regulation at 40 CFR 131.15 requires that states and authorized Tribes that choose to allow the use of NPDES permit compliance schedules adopt specific provisions authorizing their use and obtain EPA approval under CWA section 303(c) to ensure that a decision to allow permit compliance schedules is transparent and allows for public input (80 FR 51022, August 21, 2015). The EPA's approval of a state or authorized Tribe's permit compliance schedule authorizing provision as a WQS pursuant to 40 CFR 131.15 ensures that any NPDES permit that contains a compliance schedule meets the requirement that the level of water quality to be achieved by the WQBEL derive from and comply with all applicable WQS (40 CFR 122.44(d)(1)(vii)(A)).

California is authorized to administer the NPDES program and has adopted several mechanisms to specify compliance schedules in NPDES permits. In 2008, California adopted a statewide compliance schedule authorizing provision that the EPA subsequently approved under CWA section 303(c), the *Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits,* State Water Resources Control Board Resolution No. 2008–0025, April 15, 2008. This EPA-approved regulation authorizes the use of permit compliance schedules consistent with 40 CFR 131.15, and is not affected by this rule. The compliance schedule authorizing provision will allow California, as the permitting authority, to specify compliance schedules in permits, as appropriate, for the purpose of achieving compliance with a WQBEL based on the selenium criterion promulgated in this final rule, which is more stringent than the existing criteria for California, as soon as possible.

VIII. Economic Analysis

To best inform the public of the potential impacts of this rule, the EPA evaluated the potential costs associated with State implementation of the EPA's selenium criterion based on available information. This analysis is documented in *Economic Analysis for the Final Selenium Water Quality Criterion for the State of California,* which can be found in the docket for this rule. For this analysis, the EPA assumed that California fully implements its existing selenium criteria (*i.e.,* ''baseline criteria'') and estimated the incremental impacts for compliance with the selenium criterion in this rule. To facilitate this analysis, the EPA interpreted the criterion as the default water column criterion element (*i.e.,* a lentic and lotic value) from the EPA's current CWA section 304(a) selenium criterion for fresh water. For point source costs, the EPA assumed any NPDES-permitted facility that

then it must also adopt the highest attainable use (40 CFR 131.10(g)). Highest attainable use is the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, based on the evaluation of the factor(s) in 40 CFR 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the state demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable (see 40 CFR 131.3(m)).

discharges selenium would have reasonable potential and would be subject to effluent limits and would incur compliance costs if it chose to continue discharging. The EPA also evaluated nonpoint sources that contribute selenium loadings to waters that would be considered impaired for selenium under the final criterion and evaluated whether they would incur incremental costs for additional best management practices. The total annualized cost of this final rule was estimated to range from $28.34 million to $44.84 million at a 2% discount rate. See *Economic Analysis for the Final Selenium Water Quality Criterion for the State of California* for a detailed summary of the information and assumptions the EPA relied on to estimate potential costs to implement the final rule.

IX. Statutory 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 any new information-collection burden under the PRA. This action does not directly contain any information collection, reporting, or record-keeping requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 131 and has assigned OMB control number 2040–0049.

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.

The EPA-promulgated WQS are implemented through various water quality control programs, including the NPDES program, which limits discharges to navigable waters except in compliance with a NPDES permit. CWA section 301(b)(1)(C) [21] and the EPA's implementing regulations at 40 CFR 122.44(d)(1) introductory text and (d)(1)(i) provide that all NPDES permits shall include any limits on discharges that are necessary to meet applicable WQS. Thus, under the CWA, the EPA's promulgation of WQS establishes standards that the State implements through the NPDES permit process. While the State has discretion in developing discharge limits, as needed, to meet the WQS, those limits, per the regulation at 40 CFR 122.44(d)(1)(i), ''must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any [s]tate water quality standard, including [s]tate narrative criteria for water quality.''

As a result of this action, the State of California must ensure that NPDES permits it issues include any limitations on discharges necessary to comply with the WQS established in the final rule. While California's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, the EPA's action, by itself, does not impose any of these requirements on small entities; that is, these requirements are not self-implementing.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. The EPA believes, however, that this action may be of significant interest to state governments. Consistent with the EPA's policy to promote communications between the EPA and state and local governments, the EPA consulted with California early in the process of developing this rulemaking to provide the State with an opportunity to provide meaningful and timely input.

On several occasions starting in February 2018, the EPA discussed the development of this rule with the California State Water Resources Control Board and several Regional Water Quality Control Boards. Early in this process, the EPA clarified that if and when the State decides to develop and establish its own selenium standards, the EPA would assist the State in its process. During these discussions, the EPA also explained: the scientific basis for the fish and bird tissue elements of the selenium criterion and the methodologies for translating the tissue elements to water column values; the external peer review process and the comments the EPA received on the derivation of the criterion; the EPA's consideration of those comments and responses; possible alternatives for criteria or a criterion matrix; the assumptions and data being used in the economic analysis associated with the rule; and the overall timing of the Federal rulemaking effort. The EPA took these discussions with the State into account during the drafting of this final rule.

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 rule does not impose substantial direct compliance costs on federally recognized Tribal governments, nor does it substantially affect the relationship between the Federal Government and Tribes, or the distribution of power and responsibilities between the Federal Government and Tribes. Thus, Executive Order 13175 does not apply to this action.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, during the development of this action, the EPA offered Tribal leaders of potentially affected Tribes in California government-to-government consultation on the proposed selenium rulemaking. The Torres Martinez Desert Cahuilla Indian Tribe responded, with questions and concerns about selenium monitoring in the tributaries to the Salton Sea. The tributaries to the Salton Sea have State-adopted and EPA-approved site-specific water quality criteria (objectives) in place that are not affected by this rule.

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

[21] 301(b), *Timetable for achievement of objectives:* In order to carry out the objective of the chapter there shall be achieved not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of the title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the chapter.

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 does not concern an environmental health risk or safety risk. This rule relates to protection of aquatic life and aquatic-dependent wildlife. Since this action does not concern human health, the EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211 (Actions 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 impacts water quality standards, which do not regulate the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act of 1995

This rule does not involve technical standards.

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

The EPA believes that the human health and environmental conditions that exist prior to this action do not result in disproportionate and adverse effects on communities with environmental justice concerns. In the EPA's *Economic Analysis for the Final Selenium Water Quality Criterion for the State of California* (economic analysis document), which can be found in the docket for this rule, Exhibit 5–2 illustrates the geographic distribution of waters where available data indicate elevated levels of selenium. These waters are located throughout the State. An analysis of proximity to minority and low-income populations might or might not reveal patterns of association that differ from waters that are not impaired. However, making definitive connections between waters monitored for water quality and the effects of selenium from the use of these resources would likely depend on many other local factors, such as accessibility to and availability of alternative water sources.

The EPA believes that this action is not likely to result in new disproportionate and adverse effects on communities with environmental justice concerns. The freshwater criterion for selenium in California does not address human health impacts, and only applies to aquatic life and aquatic-dependent wildlife uses. This rule will support the health and abundance of aquatic life and aquatic-dependent wildlife in California and will, therefore, not only benefit those species but also benefit all communities that rely on or use these ecosystems. The EPA finds that, as compared to higher-income populations, low-income populations tend to rely more on fishing as a food source,[22] and therefore, this rule may benefit low-income communities. This and other EPA actions with goals of protecting fishing resources are a high priority for the EPA. The potential benefits associated with this final rule are also addressed in the economic analysis document.

To achieve the benefits associated with a final rule, the EPA recognizes that some facilities may need to add pollution control measures and incur additional compliance costs over time to meet any WQBELs needed to achieve the promulgated selenium criterion. The EPA used the California Communities Environmental Health Screening Tool: CalEnviroScreen 4.0 tool developed by California Office of Environmental Health Hazard Assessment and determined that none of the facilities identified in the EPA's *Economic Analysis for the Final Selenium Water Quality Criterion for the State of California* that would incur additional annual costs, are located in communities with elevated environmental justice concerns. This is one line of evidence that these communities would not bear a disproportionate share of the burden with promulgation of this rule. To further explore the anticipated impacts, the EPA analyzed two facilities identified in the EPA's economic analysis that may incur additional compliance costs over time to meet any WQBELs needed to achieve the promulgated selenium criterion. For illustrative purposes, the EPA first analyzed the Michelson Water Reclamation Plant (WRP), which serves an area located in parts of Orange County. Using CalEnviroScreen 4.0, the EPA examined education level, poverty level, and unemployment level within the service area. Some areas showed low environmental justice concerns (high education, low poverty, and low unemployment), whereas other areas in the county had slightly higher environmental justice concerns (moderate education levels, poverty, and unemployment). There did not appear to be a clear pattern of disproportionate impacts to specific communities. As presented in the economic analysis document, the EPA estimates that pollution control upgrades to the Michelson WRP could potentially result in a total cost of $4,856,000. The population served by Michelson WRP is 331,500 people, which would result in a per-person increased cost of $14.65 per year. The average household size in Orange County (the area served by Michaelson WRP) is 3.01 [23] people per household, resulting in an estimated additional average household cost of $44.09 per year, or $3.67 per month. This potentially modest increase in monthly sewerage bill of $3.67 per household per month appears unlikely to disproportionally impact low-income populations, populations with low education levels, and/or communities with low employment rates.

The second facility that the EPA has included in this analysis for illustrative purposes may incur annual costs due to implementing pollution control upgrades is the Auburn Wastewater Treatment Plant (WWTP). The Auburn WWTP serves 13,800 people in the city of Auburn in Placer County. Using the CalEnviroScreen 4.0 tool, the EPA examined education level, poverty level, and unemployment level within the service area. Auburn showed relatively high education levels, moderate poverty levels, and moderate unemployment levels. There did not appear to be a clear pattern of disproportionate impacts to specific communities. As presented in the economic analysis document, the EPA estimates that pollution control upgrades to the Auburn WWTP could potentially result in a total cost of $491,000. The population served by the Auburn WWTP is 13,800 people, which would result in a per-person increased cost of $35.58 per year. The average household size in Auburn is 2.15 [24] people per household, resulting in an estimated additional average household cost of $76.50 per year, or $6.37 per month. This potentially modest increase in monthly sewerage bill of $6.37 per household per month appears unlikely to disproportionally impact low-income populations, populations with low education levels, and/or communities with low employment rates.

These examples show that while these communities only have moderate environmental justice concerns

[22] Von Stackelberg, K., et al. (2017). Results of a national survey of high-frequency fish consumers in the United States. *Environmental Research* 158, 126–136. *https://bgc.seas.harvard.edu/assets/vonstackelberg2017.pdf.*

[23] *https://www.census.gov/quickfacts/orangecountycalifornia.*

[24] *https://www.census.gov/quickfacts/auburncitycalifornia.*

(according to CalEnviroScreen), the low-income portions of these communities would not incur a significant burden as a result of this final rule. Overall, the EPA anticipates that the abovementioned benefits will ultimately outweigh these potential pass-through sewerage costs and that this rule will help address any environmental justice concerns by benefitting aquatic species and the communities that may rely on or use them.

In addition to Executive Order 12898, and in accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin. With that directive in mind, in August 2011 the Environmental Justice Interagency Working Group established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities. While the EPA only has an oversight role for CWA implementation, if California receives Federal funds for CWA implementation, the State is legally prohibited from discriminating on the basis of race, color, or national origin under Title VI when engaging in CWA implementation activities. Additionally, and in compliance with Executive Order 12898, the EPA expects that California will consider disproportionately high and adverse human health and environmental effects on minority and low-income populations when implementing this rulemaking under the CWA.

The information supporting this Executive Order review is contained in the EPA's *Economic Analysis for the Final Selenium Water Quality Criterion for the State of California,* the California Communities Environmental Health Screening Tool: CalEnviroScreen 4.0 tool developed by California Office of Environmental Health Hazard Assessment, and the 2022 United States census data for Orange County, California and Auburn, California.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of 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 131

Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Amend § 131.38 by adding a heading for paragraph (b) and revising paragraphs (b)(1) and (c)(3)(ii) and (iii) to read as follows:

§ 131.38 Establishment of numeric criteria for priority toxic pollutants for the State of California.

* * * * *

(b) *Criteria.* (1) Criteria for priority toxic pollutants in the State of California as described in table 1 to this paragraph (b)(1):

Table 1 to Paragraph (b)(1)

BILLING CODE 6560–50–P

A		B Freshwater		C Saltwater		D Human health (10^{-6} risk for carcinogens) for consumption of:	
Number Compound	CAS No.	Criterion maximum conc. [d] (µg/L) B1	Criterion continuous conc. [d] (µg/L) B2	Criterion maximum conc. [d] (µg/L) C1	Criterion continuous conc. [d] (µg/L) C2	Water and organisms (µg/L) D1	Organisms only (µg/L) D2
1. Antimony	7440360					14 a,s	4300 a,t
2. Arsenic [b]	7440382	340 i,m,w	150 i,m,w	69 i,m	36 i,m		
3. Beryllium	7440417					n	n
4. Cadmium [b]	7440439	4.3 e,i,m,w,x	2.2 e,i,m,w	42 i,m	9.3 i,m	n	n
5a. Chromium (III)	16065831	550 e,i,m,o	180 e,i,m,o			n	n
5b. Chromium (VI) [b]	18540299	16 i,m,w	11 i,m,w	1100 i,m	50 i,m	n	n
6. Copper [b]	7440508	13 e,i,m,w,x	9.0 e,i,m,w	4.8 i,m	3.1 i,m	1300	
7. Lead [b]	7439921	65 e,i,m,z	2.5 e,i,m,z	210 i,m	8.1 i,m	n	n
8. Mercury [b]	7439976	[Reserved]	[Reserved]	[Reserved]	[Reserved]	0.050 a	0.051 a
9. Nickel [b]	7440020	470 e,i,m,w	52 e,i,m,w	74 i,m	8.2 i,m	610 a	4600 a
10. Selenium [b]	7782492	p	q,l	290 i,m	71 i,m	n	n
11. Silver [b]	7440224	3.4 e,i,m		1.9 i,m			
12. Thallium	7440280					1.7 a,s	6.3 a,t
13. Zinc [b]	7440666	120 e,i,m,w,x	120 e,i,m,w	90 i,m	81 i,m		
14. Cyanide [b]	57125	22 o	5.2 o	1 r	1 r	700 a	220,000 a,j
15. Asbestos	1332214					7,000,000 fibers/L k,s	
16. 2,3,7,8-TCDD (Dioxin)	1746016					0.000000013 c	0.000000014 c
17. Acrolein	107028					320 s	780 t
18. Acrylonitrile	107131					0.059 a,c,s	0.66 a,c,t
19. Benzene	71432					1.2 a,c	71 a,c
20. Bromoform	75252					4.3 a,c	360 a,c
21. Carbon Tetrachloride	56235					0.25 a,c,s	4.4 a,c,t
22. Chlorobenzene	108907					680 a,s	21,000 a,j,t

23. Chlorodibromomethane	124481					0.41 a,c,y	34 a,c
24. Chloroethane	75003						
25. 2-Chloroethylvinyl Ether	110758						
26. Chloroform	67663					[Reserved]	[Reserved]
27. Dichlorobromomethane	75274					0.56 a,c,y	46 a,c
28. 1,1-Dichloroethane	75343						
29. 1,2-Dichloroethane	107062					0.38 a,c,s	99 a,c,t
30. 1,1-Dichloroethylene	75354					0.057 a,c,s	3.2 a,c,t
31. 1,2-Dichloropropane	78875					0.52 a	39 a
32. 1,3-Dichloropropylene	542756					10 a,s	1,700 a,t
33. Ethylbenzene	100414					3,100 a,s	29,000 a,t
34. Methyl Bromide	74839					48 a	4,000 a
35. Methyl Chloride	74873					n	n
36. Methylene Chloride	75092					4.7 a,c	1,600 a,c
37. 1,1,2,2-Tetrachloroethane	79345					0.17 a,c,s	11 a,c,t
38. Tetrachloroethylene	127184					0.8 c,s	8.85 c,t
39. Toluene	108883					6,800 a	200,000 a
40. 1,2-Trans-Dichloroethylene	156605					700 a	140,000 a
41. 1,1,1-Trichloroethane	71556					n	n
42. 1,1,2-Trichloroethane	79005					0.60 a,c,s	42 a,c,t
43. Trichloroethylene	79016					2.7 c,s	81 c,t
44. Vinyl Chloride	75014					2 c,s	525 c,t
45. 2-Chlorophenol	95578					120 a	400 a
46. 2,4-Dichlorophenol	120832					93 a,s	790 a,t
47. 2,4-Dimethylphenol	105679					540 a	2,300 a
48. 2-Methyl-4,6-Dinitrophenol	534521					13.4 s	765 t
49. 2,4-Dinitrophenol	51285					70 a,s	14,000 a,t
50. 2-Nitrophenol	88755						
51. 4-Nitrophenol	100027						
52. 3-Methyl-4-Chlorophenol	59507						
53. Pentachlorophenol	87865	19 f,w	15 f,w	13	7.9	0.28 a,c	8.2 a,c,j

54. Phenol	108952					21,000 a	4,600,000 a,j,t
55. 2,4,6-Trichlorophenol	88062					2.1 a,c	6.5 a,c
56. Acenaphthene	83329					1,200 a	2,700 a
57. Acenaphthylene	208968						
58. Anthracene	120127					9,600 a	110,000 a
59. Benzidine	92875					0.00012 a,c,s	0.00054 a,c,t
60. Benzo(a)Anthracene	56553					0.0044 a,c	0.049 a,c
61. Benzo(a)Pyrene	50328					0.0044 a,c	0.049 a,c
62. Benzo(b)Fluoranthene	205992					0.0044 a,c	0.049 a,c
63. Benzo(ghi)Perylene	191242						
64. Benzo(k)Fluoranthene	207089					0.0044 a,c	0.049 a,c
65. Bis(2-Chloroethoxy)Methane	111911						
66. Bis(2-Chloroethyl)Ether	111444					0.031 a,c,s	1.4 a,c,t
67. Bis(2-Chloroisopropyl)Ether	108601					1,400 a	170,000 a,t
68. Bis(2-Ethylhexyl)Phthalate	117817					1.8 a,c,s	5.9 a,c,t
69. 4-Bromophenyl Phenyl Ether	101553						
70. Butylbenzyl Phthalate	85687					3,000 a	5,200 a
71. 2-Chloronaphthalene	91587					1,700 a	4,300 a
72. 4-Chlorophenyl Phenyl Ether	7005723						
73. Chrysene	218019					0.0044 a,c	0.049 a,c
74. Dibenzo(a,h)Anthracene	53703					0.0044 a,c	0.049 a,c
75. 1,2 Dichlorobenzene	95501					2,700 a	17,000 a
76. 1,3 Dichlorobenzene	541731					400	2,600
77. 1,4 Dichlorobenzene	106467					400	2,600
78. 3,3'-Dichlorobenzidine	91941					0.04 a,c,s	0.077 a,c,t
79. Diethyl Phthalate	84662					23,000 a,s	120,000 a,t
80. Dimethyl Phthalate	131113					313,000 s	2,900,000 t
81. Di-n-Butyl Phthalate	84742					2,700 a,s	12,000 a,t
82. 2,4-Dinitrotoluene	121142					0.11 c,s	9.1 c,t
83. 2,6-Dinitrotoluene	606202						
84. Di-n-Octyl Phthalate	117840						

85. 1,2-Diphenylhydrazine	122667					0.040 a,c,s	0.54 a,c,t
86. Fluoranthene	206440					300 a	370 a
87. Fluorene	86737					1,300 a	14,000 a
88. Hexachlorobenzene	118741					0.00075 a,c	0.00077 a,c
89. Hexachlorobutadiene	87683					0.44 a,c,s	50 a,c,t
90. Hexachlorocyclopentadiene	77474					240 a,s	17,000 a,j,t
91. Hexachloroethane	67721					1.9 a,c,s	8.9 a,c,t
92. Indeno(1,2,3-cd) Pyrene	193395					0.0044 a,c	0.049 a,c
93. Isophorone	78591					8.4 c,s	600 c,t
94. Naphthalene	91203						
95. Nitrobenzene	98953					17 a,s	1,900 a,j,t
96. N-Nitrosodimethylamine	62759					0.00069 a,c,s	8.1 a,c,t
97. N-Nitrosodi-n-Propylamine	621647					0.005 a	1.4 a
98. N-Nitrosodiphenylamine	86306					5.0 a,c,s	16 a,c,t
99. Phenanthrene	85018						
100. Pyrene	129000					960 a	11,000 a
101. 1,2,4-Trichlorobenzene	120821						
102. Aldrin	309002	3 g		1.3 g		0.00013 a,c	0.00014 a,c
103. alpha-BHC	319846					0.0039 a,c	0.013 a,c
104. beta-BHC	319857					0.014 a,c	0.046 a,c
105. gamma-BHC	58899	0.95 w		0.16 g		0.019 c	0.063 c
106. delta-BHC	319868						
107. Chlordane	57749	2.4 g	0.0043 g	0.09 g	0.004 g	0.00057 a,c	0.00059 a,c
108. 4,4'-DDT	50293	1.1 g	0.001 g	0.13 g	0.001 g	0.00059 a,c	0.00059 a,c
109. 4,4'-DDE	72559					0.00059 a,c	0.00059 a,c
110. 4,4'-DDD	72548					0.00083 a,c	0.00084 a,c
111. Dieldrin	60571	0.24 w	0.056 w	0.71 g	0.0019 g	0.00014 a,c	0.00014 a,c
112. alpha-Endosulfan	959988	0.22 g	0.056 g	0.034 g	0.0087 g	110 a	240 a
113. beta-Endosulfan	33213659	0.22 g	0.056 g	0.034 g	0.0087 g	110 a	240 a

114. Endosulfan Sulfate	1031078					110 a	240 a
115. Endrin	72208	0.086 w	0.036 w	0.037 g	0.0023 g	0.76 a	0.81 a,j
116. Endrin Aldehyde	7421934					0.76 a	0.81 a,j
117. Heptachlor	76448	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00021 a,c	0.00021 a,c
118. Heptachlor Epoxide	1024573	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00010 a,c	0.00011 a,c
119-125. Polychlorinated biphenyls (PCBs)			0.014 u		0.03 u	0.00017 c,v	0.00017 c,v
126. Toxaphene	8001352	0.73	0.0002	0.21	0.0002	0.00073 a,c	0.00075 a,c
Total Number of Criteria [h]		22	21	22	20	92	90

a. Criteria revised to reflect the Agency q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of October 1, 1996. The fish tissue bioconcentration factor (BCF) from the 1980 documents was retained in each case.

b. Criteria apply to California waters except for those waters subject to objectives in Tables III-2A and III-2B of the San Francisco Regional Water Quality Control Board's (SFRWQCB) 1986 Basin Plan that were adopted by the SFRWQCB and the State Water Resources Control Board, approved by the EPA, and which continue to apply. For copper and nickel, criteria apply to California waters except for waters south of Dumbarton Bridge in San Francisco Bay that are subject to the objectives in the SFRWQCB's Basin Plan as amended by SFRWQCB Resolution R2-2002-0061, dated May 22, 2002, and approved by the State Water Resources Control Board. The EPA approved the aquatic life site-specific objectives on January 21, 2003. The copper and nickel aquatic life site-specific objectives contained in the amended Basin Plan apply instead.

c. Criteria are based on carcinogenicity of 10 (-6) risk.

d. Criteria Maximum Concentration (CMC) equals the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time without deleterious effects. Criteria Continuous Concentration (CCC) equals the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. ug/L equals micrograms per liter.

e. Freshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/L) in the water body. The equations are provided in matrix at paragraph (b)(2) of this section. Values displayed above in the matrix correspond to a total hardness of 100 mg/l.

f. Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows: Values displayed above in the matrix correspond to a pH of 7.8. CMC = exp(1.005(pH)−4.869). CCC = exp(1.005(pH)−5.134).

g. This criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5-80-019), Chlordane (EPA 440/5-80-027), DDT (EPA 440/5-80-038), Endosulfan (EPA 440/5-80-046), Endrin (EPA 440/5-80-047), Heptachlor (440/5-80-052), Hexachlorocyclohexane (EPA 440/5-80-054), Silver (EPA 440/5-80-071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

h. These totals simply sum the criteria in each column. For aquatic life, there are 23 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria. For human health, there are 92 priority toxic pollutants with either "water + organism" or "organism only" criteria. Note that these totals count chromium as one pollutant even though the EPA has developed criteria based on two valence states. In the matrix, the EPA has assigned numbers 5a and 5b to the criteria for chromium to reflect the fact that the list of 126 priority pollutants includes only a single listing for chromium.

i. Criteria for these metals are expressed as a function of the water-effect ratio, WER, as defined in paragraph (c) of this section. CMC = column B1 or C1 value × WER; CCC = column B2 or C2 value × WER.

j. No criterion for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

k. The CWA 304(a) criterion for asbestos is the MCL.

l. See paragraph (b)(1)(i) of this section.

m. These freshwater and saltwater criteria for metals are expressed in terms of the dissolved fraction of the metal in the water column. Criterion values were calculated by using the EPA's Clean Water Act 304(a) guidance values (described in the total recoverable fraction) and then applying the conversion factors in § 131.36(b)(1) and (2).

n. The EPA is not promulgating human health criteria for these contaminants. However, permit authorities should address these contaminants in NPDES permit actions using the State's existing narrative criteria for toxics.

o. These criteria were promulgated for specific waters in California in the National Toxics Rule ("NTR"), at § 131.36. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries and waters of the State defined as inland, i.e., all surface waters of the State not ocean waters. These waters specifically include the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. This section does not apply instead of the NTR for this criterion.

p. No acute criterion applies except as follows. A criterion of 20 µg/L was promulgated for specific waters in California in the NTR in the total recoverable form and still applies to waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; waters of Salt Slough; Mud Slough (north); and the San Joaquin River, Sack Dam to the mouth of Merced River. The State of California adopted and the EPA approved site-specific acute criteria that still apply to the San Joaquin River, mouth of Merced to Vernalis; Salt Slough; constructed and reconstructed water supply channels in the Grassland watershed listed in Appendix 40 of the State of California Central Valley Regional Water Quality Control Board Basin Plan; and all surface waters that are tributaries to the Salton Sea.

q. The chronic criterion specified in paragraph (b)(1)(i) of this section applies except as follows. A chronic criterion of 5 µg/L was promulgated for specific waters in California in the NTR in the total recoverable form and still applies to waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; waters of Salt Slough; Mud Slough (north); and the San Joaquin River, Sack Dam to Vernalis. Paragraph (b)(1)(i) does not apply instead of the NTR for these waters. The State of California adopted and the EPA approved a site-specific criterion for the Salt Slough, constructed and reconstructed water supply channels in the Grassland watershed listed in Appendix 40 of the State of California Central Valley Regional Water Quality Control Board Basin Plan, and all surface waters that are tributaries to the Salton Sea; therefore, paragraph (b)(1)(i) does not apply to these waters.

r. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the Sacramento-San Joaquin Delta within California Regional Water Board 5, but excluding the San Francisco Bay. This section does not apply instead of the NTR for these criteria.

s. These criteria were promulgated for specific waters in California in the NTR. The specific

waters to which the NTR criteria apply include: Waters of the Sacramento-San Joaquin Delta and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) that include a MUN use designation. This section does not apply instead of the NTR for these criteria.

t. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays and estuaries including San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) without a MUN use designation. This section does not apply instead of the NTR for these criteria.

u. PCBs are a class of chemicals which include aroclors 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825, and 12674112, respectively. The aquatic life criteria apply to the sum of this set of seven aroclors.

v. This criterion applies to total PCBs, e.g., the sum of all congener or isomer or homolog or aroclor analyses.

w. This criterion has been recalculated pursuant to the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA-820-B-96-001, September 1996. See also Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA-80-B-95-004, March 1995.

x. The State of California has adopted and the EPA has approved site specific criteria for the Sacramento River (and tributaries) above Hamilton City; therefore, these criteria do not apply to these waters.

y. The State of California adopted and the EPA approved a site-specific criterion for New Alamo Creek from Old Alamo Creek to Ulatis Creek and for Ulatis Creek from Alamo Creek to Cache Slough; therefore, this criterion does not apply to these waters.

z. The State of California adopted and the EPA approved a site-specific criterion for the Los Angeles River and its tributaries; therefore, this criterion does not apply to these waters.

(i) *California Freshwater Selenium Ambient Chronic Water Quality Criterion for Protection of Aquatic Life and Aquatic-Dependent Wildlife.*

Table 2 to Paragraph (b)(1)(i)

Media Type	Bird Tissue	Fish Tissue[1]		Water Column[4]	
Criterion Element	**Bird Egg[2]**	**Egg-Ovary[2]**	**Fish Whole-Body or Muscle[3]**	**Monthly Average Exposure[5]**	**Intermittent Exposure[6]**
Magnitude	11.2 mg/kg dw	15.1 mg/kg dw	8.5 mg/kg dw whole-body or 11.3 mg/kg dw muscle (skinless, boneless filet)	1.5 µg/L in lentic aquatic systems 3.1 µg/L in lotic aquatic systems	$WQC_{int} = \frac{WQC_{30-day} - C_{bkgrnd}(1 - f_{int})}{f_{int}}$
Duration	Instantaneous measurement[7]	Instantaneous measurement[7]	Instantaneous measurement[7]	30 days	Number of days/month with an elevated concentration
Frequency	Not to be exceeded	Not to be exceeded	Not to be exceeded	Not more than once in three years on average	Not more than once in three years on average

1. Fish tissue criterion elements are expressed as steady-state.
2. Fish egg-ovary supersedes any whole-body, muscle, or water column criterion elements for aquatic life when fish egg-ovary are measured, except as noted in footnote 4. Bird egg supersedes water column criterion elements for aquatic-dependent wildlife when bird eggs are measured, except as noted in footnote 4. The bird tissue criterion element is independently applicable from and equivalent to the fish tissue criterion elements.
3. Fish whole-body or muscle tissue supersedes the water column criterion elements when both fish tissue and water concentrations are measured, except as noted in footnote 4.
4. Water column criterion elements are based on dissolved total selenium in water and are derived from fish tissue and bird tissue criterion elements via bioaccumulation modeling. When selenium inputs are increasing, water column criterion elements are the applicable criterion elements in the absence of steady-state condition fish tissue or bird tissue data.
5. The water column criterion element, which applies independently to the respective aquatic life and aquatic-dependent wildlife uses, is applicable for all CWA purposes and consists of a water column value of 1.5 µg/L in lentic aquatic systems and 3.1 µg/L in lotic aquatic systems unless or until a site-specific water column criterion element is derived for a particular waterbody following the methodology described in *Method for Translating Selenium Tissue Criterion Elements into Site-specific Water Column Criterion Elements for California, Version 2, December 2024*. This publication is incorporated by reference into this section with the approval of the Director of the *Federal Register* under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available at EPA, OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, 20004; phone: (202) 566-2426; website: *https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california*. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.
6. Where $WQC_{30\text{-}day}$ is the applicable water column monthly criterion element, C_{bkgrnd} is the average background selenium concentration, and f_{int} is the fraction of any 30-day period during which elevated selenium concentrations occur, with f_{int} assigned a value ≥0.033 (corresponding to 1 day).
7. Fish tissue and bird tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in bird or fish population(s) at a given site.

BILLING CODE 6560–50–C

(ii) *Priority toxic pollutants.* Table 1 to this paragraph (b)(1) lists all of the EPA's priority toxic pollutants whether or not criteria guidance are available. Blank spaces indicate the absence of national criteria guidance under CWA section 304(a). Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in appendix A to 40 CFR part 423. The EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

(iii) *Criteria recommendations not included in table 1 to this paragraph (b)(1).* The following chemicals have organoleptic-based criteria recommendations that are not included

in table 1: zinc, 3-methyl-4-chlorophenol.

(iv) *Freshwater and saltwater aquatic life criteria.* Freshwater and saltwater aquatic life criteria apply as specified in paragraph (c)(3) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) For waters in which the salinity is equal to or greater than 10 parts per thousand 95% or more of the time, the applicable criteria are the saltwater criteria in column C, except for selenium in waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta where the applicable criteria are the freshwater criteria in column B of the National Toxic Rule (''NTR'') at § 131.36.

(iii) For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs (c)(3)(i) and (ii) of this section, the applicable criteria are the more stringent of the freshwater or saltwater criteria, except for selenium in waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta where the applicable criteria are the freshwater criteria in column B of the NTR. However, the Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the water body is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the water body is dominated by saltwater aquatic life and that saltwater criteria are more appropriate. Before approving any change, the EPA will publish for public comment a document proposing the change.

* * * * *

[FR Doc. 2024–29483 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2022–0231; FRL–12399–01–OCSPP]

Brevibacillus Laterosporus Mpp75Aa1.1 and Bacillus Thuringiensis Vpb4Da2 Proteins; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of the *Brevibacillus laterosporus* Mpp75Aa1.1 and *Bacillus thuringiensis* Vpb4Da2 proteins (hereafter Mpp75Aa1.1 and Vpb4Da2 proteins) in or on the food and feed commodities of corn: corn, field; corn, sweet, and corn, pop when used as plant-incorporated protectants (PIP) in corn. Bayer CropScience LP., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting these exemptions. These regulations eliminate the need to establish maximum permissible levels for residues of Mpp75Aa1.1 and Vpb4Da2 proteins.

DATES: This regulation is effective December 17, 2024. Objections and requests for hearings must be received on or before February 18, 2025, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0231, is available at *https://www.regulations.gov*. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Madison Le, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 564–5754; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 174 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-174.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0231, in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 18, 2025. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0231, by one of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

Mail: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

Hand Delivery: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

II. Background and Statutory Findings

In the **Federal Register** of December 19, 2023 (88 FR 87733) (FRL–10579–11–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F9076) by Bayer CropScience LP, 800 N. Lindbergh Blvd., St. Louis, Missouri 63167. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of the plant-incorporated protectants (PIPs) *Brevibacillus laterosporus* Mpp75Aa1.1 and *Bacillus thuringienisis* Vpb4Da2 in or on corn. That document referenced a summary of the petition prepared by the petitioner Bayer Crop Science LP, which is available in the docket at *https://www.regulations.gov.* There was one comment received in response to the notice of filing.

III. Final Rule

A. EPA's Safety Determination

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

EPA evaluated the available toxicity and exposure data on Mpp75Aa1.1 and Vpb4Da2 proteins and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Review of the Application for an Experimental Use Permit to Test MON 95275 Corn (OECD Unique Identifier MON–95275–7) Expressing Transgenic Plant-Incorporated Protectants Mpp75Aa1.1, Vpb4Da2, and Double Stranded RNA DvSnf7.1 and the Genetic Material Necessary for their Production (Vector PV–ZMIR525664)'' (hereafter Human Health Risk Assessment). This document, as well as other relevant information, is available in the docket for this action EPA–HQ–OPP–2022–0231.

Mpp75Aa1.1 is a modified protein derived from the bacterium *Brevibacillus laterosporus* and is active against certain coleopteran pests of corn. Available data demonstrated that, with regard to humans, the Mpp75Aa1.1 protein does not pose a toxic or allergenic risk. An acute oral toxicity study using purified Mpp75Aa1.1 protein shows that the protein is not toxic to mammals via the oral route of exposure at levels well above those that are reasonably anticipated through normal dietary consumption of the crop. In addition, a bioinformatics analysis of the primary protein sequence did not identify any significant homologies of the Mpp75Aa1.1 protein to known mammalian toxins. Likewise, the potential for allergenicity is low because: (1) the bacterial source of the Mpp75Aa1.1 protein, *Brevibacillus laterosporus,* is ubiquitous in the environment, which implies widespread human and animal exposure, and a scientific literature search of the bacterium did not indicate any allergenic history; (2) bioinformatic analyses indicate no biologically relevant similarity between the Mpp75Aa1.1 protein and any known allergens; (3) the Mpp75Aa1.1 protein degrades rapidly when exposed to digestive enzymes (gastric proteases) present in the human gastrointestinal tract; (4) the Mpp75Aa1.1 protein shows loss of function under high temperatures (≥75 °C), indicating that it is heat labile and will likely denature in the course of normal thermal treatment during food preparation; and (5) the Mpp75Aa1.1 protein is not glycosylated, which further reduces its allergenicity potential. Glycosylation is an enzymatic post-translational process in which carbohydrates (glycans) link to proteins, creating structures which could lead to an immune response in humans.

The most likely route of exposure to this plant-incorporated protectant is dietary, via products produced from corn expressing the Mpp75Aa1.1 protein. Oral exposure from ingestion of drinking water is unlikely because the Mpp75Aa1.1 protein is present at very low levels within the plant cells, and the amounts likely to enter the water column from leaves, pollen or plant detritus are low. Further, if Mpp75Aa1.1 protein were to enter the water column, it is expected to break down rapidly through natural processes (*e.g.,* microbial or UV degradation) or normal communal water-treatment procedures. Even if there may be dietary exposure to residues of the Mpp75Aa1.1 protein, such exposure presents no concern for adverse effects based on the available toxicity and allergenicity analysis mentioned above.

Non-dietary non-occupational exposure via dermal or ocular routes is not likely since the Mpp75Aa1.1 protein is contained within plant cells. The most likely non-dietary route of exposure to the Mpp75Aa1.1 protein may be through inhalation of corn pollen. However, exposure to the Mpp75Aa1.1 protein through this route of exposure is expected to be negligible for several reasons: (1) its presence in pollen was demonstrated to be very low (below the limit of quantification), and (2) corn pollen is not respirable, as it consists of spherical particles ranging in size from 80 to 125 µm, in contrast with respirable particles that are less than 10 µm. Even if inhalation of dust-like particles were to occur, the Mpp75Aa1.1 protein is contained within plant cells, which essentially eliminates pulmonary exposure to the proteins. Further, as described above, such exposure would not be expected to present any risk due to the lack of toxicity or allergenicity observed for the Mpp75Aa1.1 protein. These findings are discussed in more detail in the Human Health Risk Assessment.

Vpb4Da2 is derived from the bacterium *Bacillus thuringiensis* (*Bt*) and is active against certain coleopteran pests of corn. Available data demonstrated that, with regard to humans, the Vpb4Da2 protein does not pose a toxic or allergenic risk. An acute oral toxicity study using purified Vpb4Da2 protein shows that the protein is not toxic to mammals via the oral route of exposure at levels well above those that are reasonably anticipated through normal dietary consumption of the crop. In addition, a bioinformatics analysis of the primary protein sequence

did not identify any significant homologies of the Vpb4Da2 protein to known mammalian toxins. Likewise, the potential for allergenicity is low because: (1) the bacterial source of the Vpb4Da2 protein, *Bacillus thuringiensis,* has a long history of safe use, including use as a pesticide, and is not considered to be a source of allergenic proteins; (2) bioinformatic analyses indicate no biologically relevant similarity between the Vpb4Da2 protein and any known allergens; (3) the Vpb4Da2 protein degrades rapidly when exposed to digestive enzymes (gastric proteases) present in the human gastrointestinal tract; (4) the Vpb4Da2 protein shows loss of function under high temperatures (≥55 °C), indicating that it is heat labile and will likely denature in the course of normal thermal treatment during food preparation; and (5) the Vpb4Da2 protein is not glycosylated, which further reduces its allergenicity potential. Glycosylation is an enzymatic post-translational process in which carbohydrates (glycans) link to proteins, creating structures which could lead to an immune response in humans.

The most likely route of exposure to this plant-incorporated protectant is dietary, via products produced from corn expressing the protein. Oral exposure from ingestion of drinking water is unlikely because the Vpb4Da2 protein is present at very low levels within the plant cells and the amounts likely to enter the water column from leaves, pollen or plant detritus are low. Further, if protein were to enter the water column, it is expected to break down rapidly through natural processes (*e.g.,* microbial or UV degradation) or normal communal water-treatment procedures. Even if there may be dietary exposure to residues of the Vpb4Da2 protein, such exposure presents no concern for adverse effects based on the toxicity and allergenicity discussion above.

Non-dietary non-occupational exposure via dermal or ocular routes is not likely since the Vpb4Da2 protein is contained within plant cells. The most likely non-dietary route of exposure to the Vpb4Da2 protein may be through inhalation of corn pollen. However, exposure to the Vpb4Da2 protein through this route of exposure is expected to be negligible for several reasons: (1) its presence in pollen was demonstrated to be very low (below the limit of quantification), and (2) corn pollen is not respirable, as it consists of spherical particles ranging in size from 80 to 125 µm, in contrast with respirable particles that are less than 10 µm. Even if inhalation of dust-like particles were to occur, the Vpb4Da2 protein is contained within plant cells, which essentially eliminates pulmonary exposure to the proteins. Further, as described above, such exposure would not be expected to present any risk due to the lack of toxicity or allergenicity observed for the Vpb4Da2 protein These findings are discussed in more detail in the Human Health Risk Assessment.

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' No risk of cumulative toxicity or effects from the Mpp75Aa1.1 protein has been identified as no toxicity or allergenicity has been shown for this protein in the submitted studies. Therefore, EPA has concluded that the Mpp75Aa1.1 protein does not have a common mechanism of toxicity with other substances. Similarly, no risk of cumulative toxicity or effects from the Vpb4Da2 protein has been identified as no toxicity or allergenicity has been shown for this protein in the submitted studies. Therefore, EPA has concluded that the Vpb4Da2 protein does not have a common mechanism of toxicity with other substances.

Although FFDCA section 408(b)(2)(C) provides for an additional tenfold margin of safety for infants and children in the case of threshold effects, EPA has determined that there are no such effects due to the lack of toxicity of the Mpp75Aa1.1 protein. As a result, an additional margin of safety for the protection of infants and children is unnecessary. Similarly, EPA has determined that there are no such effects due to the lack of toxicity of the Vpb4Da2 protein. As a result, an additional margin of safety for the protection of infants and children is unnecessary.

Based upon its evaluation described above and in the Human Health Risk Assessment, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the Mpp75Aa1.1 protein derived from the bacterium *Brevibacillus laterosporus.* Therefore, an exemption from the requirement of a tolerance is established for residues of the Mpp75Aa1.1 protein in or on the food and feed commodities of corn: corn, field; corn, sweet; and corn, pop when used as a plant-incorporated protectant in corn.

Similarly, based upon its evaluation described above and in the Human Health Risk Assessment, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the Vpb4Da2 protein derived from the bacterium *Bacillus thuringiensis* (*Bt*). Therefore, an exemption from the requirement of a tolerance is established for residues of the Vpb4Da2 protein in or on the food and feed commodities of corn: corn, field; corn, sweet; and corn, pop when used as a plant-incorporated protectant in corn.

B. Analytical Enforcement Methodology

EPA has determined that validated Enzyme-Linked Immunosorbent Assays (ELISA) are available for the detection of Mpp75Aa1.1 and Vpb4Da2 proteins. These assays have been demonstrated to reliably detect the levels of the Mpp75Aa1.1 and Vpb4Da2 proteins in the tissues of corn.

C. Response to Comment

One comment was received during the public comment period for the notice of filing. The commentor provided general objections to EPA establishing exemptions from tolerances for pesticides but did not provide any specific or substantive objections to the petition to exempt the Mpp75Aa1.1 and Vpb4Da2 proteins when used as plant-incorporated protectants. Based on its review of the data and other information submitted in support of the tolerance exemption petition (as described above in Unit III.A), EPA has determined that a tolerance exemption for Mpp75Aa1.1 and Vpb4Da2 proteins, when used as plant-incorporated protectants, is safe under the FFDCA. Therefore, EPA is establishing an exemption from the requirement of a tolerance for residues of Mpp75Aa1.1 and Vpb4Da2 proteins in or on the food and feed commodities of corn.

IV. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive

Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 4, 2024.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 174—PROCEDURES AND REQUIREMENTS FOR PLANT-INCORPORATED PROTECTANTS

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 321(q), 346a and 371.

■ 2. Add §§ 174.551 and 174.552 to subpart W to read as follows:

Subpart W—Tolerances and Tolerance Exemptions

* * * * *

§ 174.551 *Brevibacillus laterosporus* Mpp75Aa1.1 protein; exemption from the requirement of a tolerance.

Residues of *Brevibacillus laterosporus* Mpp75Aa1.1 protein in or on the food and feed commodities of corn: corn, field; corn, sweet; and corn, pop are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in corn.

§ 174.552 *Bacillus thuringiensis* Vpb4Da2 protein; exemption from the requirement of a tolerance.

Residues of *Bacillus thuringiensis* Vpb4Da2 protein in or on the food and feed commodities of corn: corn, field; corn, sweet; and corn, pop are exempt from the requirement of a tolerance when used as a plant-incorporated protectant in corn.

[FR Doc. 2024–29133 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 73

[Docket No. CDC–2020–0024]

RIN 0920–AA71

Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review of the List of Select Agents and Toxins

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule finalizes updates to the HHS list of select agents and toxins that could pose a severe threat to public health and safety. These updates were proposed along with other changes to the select agent and toxin regulations, which will be addressed in a separate regulatory action. In a companion document published in this issue of the **Federal Register**, the U.S. Department of Agriculture (USDA) is making parallel regulatory changes.

DATES: This final rule is effective January 16, 2025.

FOR FURTHER INFORMATION CONTACT: Daniel A. Singer, MD, Acting Director, Division of Regulatory Science and Compliance, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–4, Atlanta, Georgia 30329. Telephone: (404) 553–8266.

SUPPLEMENTARY INFORMATION: The final rule is organized as follows:

I. Background
- A. Legal Authority
- B. 2024 Proposed Rule

II. Responses to Comments and Provisions of the Proposed Rule
- A. Removal of *Brucella abortus, Brucella melitensis,* and *Brucella suis*
- B. Nomenclature and Other Changes in the Select Agent and Toxin List
- C. Additional Comments Received
- D. Retaining Tier 1 Designation of Botulinum Neurotoxin Producing Species of *Clostridium*
- E. No Addition of Hantaviruses
- F. Toxin Review: Changes to Exclusion Limits for Short, Paralytic Alpha Conotoxins
- G. Designation of Nipah Virus as a Tier 1 Select Agent
- H. Addition of a Footnote to the HHS Select Agent and Overlap Select Agent List
- I. Summary of Final Rule Provisions

III. Alternatives Considered

IV. Required Regulatory Analyses
- A. Executive Orders 12866, 13563, and 14094
- B. The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

C. Paperwork Reduction Act of 1995
D. E.O. 12988: Civil Justice Reform
E. E.O. 13132: Federalism
F. Plain Language Act of 2010
V. References

I. Background

A. Legal Authority

Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Response Act), the HHS Secretary must, by regulation, establish and maintain a list of biological agents and toxins that have the potential to pose a severe threat to public health and safety (42 U.S.C. 262a(a)(1)). In determining whether to include a biological agent or toxin on the list, the Bioterrorism Response Act requires that the HHS Secretary consider the following criteria:

- the effect on human health of exposure to an agent or toxin;
- the degree of contagiousness of the agent and the methods by which the agent or toxin is transferred to humans;
- the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent illnesses resulting from an agent or toxin; and
- any other criteria, including the needs of children and other vulnerable populations, that the HHS Secretary considers appropriate (42 U.S.C. 262a(a)(1)(B)).

Under 42 U.S.C. 262a(a)(2), the HHS Secretary must review and republish the list of HHS select agents and toxins at least biennially.

In the preparation of this rulemaking, HHS/CDC considered the statutory criteria and evaluated each agent and toxin based on the following:

- *Effect on human health:*
  - the degree of pathogenicity (ability of an organism to cause disease);
  - long-term health effects;
  - severity of illness;
  - case fatality rate;
  - status of host immunity (*e.g.,* whether an individual has already been exposed to the agent and generated an immune response);
  - vulnerability of special populations;
- *Degree of contagiousness:*
  - dissemination efficacy;
  - aerosol stability;
  - rate of transmission;
- *Availability and effectiveness of pharmacotherapies:*
  - available treatment;
- *Other Criteria:*
  - decontamination and restoration (the extent remediation efforts are needed due to agent persistence in the environment and population);
  - matrix stability;
  - ease of production;
  - ability to genetically manipulate or alter;
  - the burden or impact on the health care system.

The Federal Select Agent Program (FSAP) is the collaboration of the CDC, Division of Regulatory Science and Compliance (previously known as the Division of Select Agents and Toxins), and the USDA Animal and Plant Health Inspection Service (APHIS), Division of Agricultural Select Agents and Toxins. These two agencies administer the HHS and USDA select agent and toxin regulations and coordinate Federal oversight of select agents and toxins in a manner to minimize the administrative burden on the regulated community.

The list of HHS select agents and toxins is divided into two sections—agents and toxins regulated solely by HHS and agents that are regulated by both HHS and USDA. The biological agents and toxins listed in 42 CFR 73.3 (HHS select agents and toxins) have the potential to pose a severe threat to human health and safety and are regulated only by HHS. The biological agents listed in § 73.4 (overlap select agents and toxins) have the potential to pose a severe threat to human health and safety, as determined by HHS, and a severe threat to animals and animal products, as determined by the USDA, pursuant to USDA's authority under the Agriculture Bioterrorism Protection Act of 2002 (7 U.S.C. 8401). Accordingly, these biological agents are jointly regulated by HHS and USDA as ''overlap'' select agents. The Bioterrorism Response Act defines the term ''overlap agents and toxins'' to mean biological agents and toxins that are listed pursuant to 42 U.S.C. 262a(a)(1) and listed pursuant to 7 U.S.C. 8401(a)(1). If HHS/CDC removes any overlap select agents from its list, these agents might still be regulated as USDA select agents dependent on the outcome of the USDA biennial review.

B. 2024 Proposed Rule

On March 17, 2020, CDC published an advance notice of proposed rulemaking (ANPRM) (85 FR 15087) seeking public comments on potential changes to the current list of HHS and overlap select agents and toxins that are regulated by both HHS and USDA. The received comments broadly supported removal of the *Brucella* species—of the 335 comments received, 325 supported removal of one or more species of *Brucella.* Only two commenters were in favor of retaining the *Brucella* species.

HHS/CDC engaged the Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC) to review and consider the public comments. The committee reviewed the public comments over a series of seven meetings held between June 12, 2020, and December 11, 2020. Other Federal subject-matter experts were invited to the meetings to address questions from the committee. The ANPRM also requested input on removal of other agents from the list (*e.g., Coxiella burnetii, Rickettsia prowazekii, Bacillus anthracis* [Pasteur strain]). After considering public comments, ISATTAC advisory input, and Federal subject-matter experts' input, CDC proposed changes to the select agent and toxin list and removal of three species of *Brucella.*

On January 30, 2024, HHS issued a proposed rule entitled ''Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review of the List of Select Agents and Toxins'' (89 FR 5823). The proposed rule included two sets of proposals: (1) regulatory changes related to the select agents and toxins on the list (*i.e.,* remove three species of *Brucella* from the list of overlap select agents and toxins, raise one toxin's exclusion amounts, rename three viruses, designate a current agent as a Tier 1 agent, and remove the designation of Tier 1 status from one agent), and (2) regulatory changes related to the administration of FSAP. This second set of proposals included adding definitions and provisions to clarify inactivation of select agents, adding requirements to report discoveries of select agents and toxins, and codifying policies regarding effluent decontamination systems and biosafety provisions for facility verification requirements for registered biosafety level 3 and animal biosafety level 3 laboratories.

HHS/CDC has elected to finalize the January 30, 2024, proposed rule in two separate rulemakings—one final rule focused on changes to the select agents and toxins list (this final rule), and a second final rule focused on regulatory changes to the administration of the FSAP discussed above. This final rule will focus solely on removing three select agents, raising one toxin's exclusion limit, updating nomenclature, and designating an agent as Tier 1. HHS/CDC is proceeding with two final rules for clarity and to avoid any unnecessary delay in finalizing the revised select agents and toxins list. HHS/CDC will publish another regulatory action focused on the proposed rule's administrative and programmatic changes at a later date. Like HHS/CDC, USDA/APHIS is also

proceeding with two separate final rules for this rulemaking.

Interested persons or organizations were invited to participate by submitting written views, recommendations, and data. HHS/CDC invited general comments as to whether there are additional biological agents or toxins that should be added or removed from the HHS list of select agents and toxins based on the following criteria outlined under 42 U.S.C. 262a(a)(1)(B):

(1) ''the effect on human health of exposure to the agent or toxin;''

(2) ''the degree of contagiousness of the agent or toxin and the methods by which the agent or toxin is transferred to humans;''

(3) ''the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent any illness resulting from infection by the agent or toxin;'' and

(4) ''any other criteria, including the needs of children and other vulnerable populations, that the Secretary considers appropriate''.

Comments were also requested on the following specific proposed changes to the list of HHS select agents and toxins:

- Removal of *Brucella abortus, Brucella melitensis,* and *Brucella suis:* Proposal to remove *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agent list.
- Updates to nomenclature of select agents: To change ''SARS coronavirus (SARS–CoV)'' to ''Severe acute respiratory syndrome coronavirus (SARS–CoV)'' to correct the nomenclature; to remove the exclusion regarding South American genotype of Eastern Equine Encephalitis virus as this terminology is no longer the correct nomenclature; and to rename Ebola virus to *Ebolavirus* in accordance with the recent taxonomic change by the International Committee on Taxonomy of Viruses (ICTV) (this was initially included as its own section in the proposed rule but moved under this section for nomenclature changes).
- Updates to nomenclature of monkeypox virus: Proposal to update the terminology of ''monkeypox virus,'' which was initially proposed to be updated to ''Mpox Clade I.''
- Removal of the Designation of Botulinum neurotoxin producing species of *Clostridium* as a Tier 1 Agent: Proposal to retain botulinum neurotoxin producing species of *Clostridium* as an HHS select agent, but no longer list it as a Tier 1 agent.
- No Addition of Hantaviruses: Proposal to not add Sin Nombre virus (SNV), Andes virus (ANDV), Hantaan virus (HTNV), and Dobrava virus (DOBV) to the select agent list.
- Toxin Review: Changes to Exclusion Limits for Short, Paralytic Alpha Conotoxins: Proposal to increase the exclusion amount for short, paralytic alpha conotoxins from 100 mg to 200 mg.
- Designation of Nipah virus as a Tier 1 Select Agent: Proposal to designate Nipah virus as a Tier 1 select agent.
- Addition of a Footnote to the HHS Select Agent List on the FSAP website: Proposal to add a footnote to the list for HHS and Overlap select agents indicating that the current nomenclature will be available on the FSAP website (*https://www.selectagents.gov*) to harmonize the list of select agent viruses with ICTV nomenclature.

The public comment period for the proposed rule ended on April 1, 2024. HHS/CDC received 44 unique comments from individuals, stakeholders, and groups and carefully reviewed and considered the comments in this preparation of the final rule. Of these 44 comments, 37 include discussion of the list of select agents discussed in this final rule. A summary of the comments relevant to the content of this final rule and responses to those comments are found at section II, below. Public comments addressing other topics from the proposed rule will be addressed in a separate regulatory action.

II. Responses to Comments and Provisions of the Proposed Rule

The following is a section-by-section discussion of the changes HHS/CDC is making to the list of select agents and toxins in 42 CFR 73.3 and 73.4 after consideration of public comments. As previously stated, the changes proposed in the proposed rule will be finalized in two separate rules. This final rule addresses changes to the list of select agents and toxins in 42 CFR 73.3 and 73.4. All other revisions to definitions, policies, and regulatory requirements addressed in the proposed rule will be addressed in a separate final rule.

A. Removal of Brucella abortus, Brucella melitensis, and Brucella suis

Regarding the request for comment on whether to remove three species of *Brucella* (*B. abortus, B. melitensis, and B. suis*) from the select agent and toxins list, HHS/CDC received 37 comments from individuals, animal health groups, regulated entities, and public health associations that fully supported removing the three agents. No public comments proposed maintaining these agents on the select agent and toxins list.

Individuals and animal health groups stated that they support removing *B. abortus, B. melitensis,* and *B. suis* to allow for more robust studies on alternative methods of surveillance, effective delivery mechanisms for wildlife vaccination, and techniques to limit disease spread, such as contraception and novel sustained-release antibiotics in conjunction with immuno-contraception. Commenters stated the etiology and pathophysiology of the *Brucella* species make it poorly suited to cause a severe threat to human health. Commenters further noted that the disease is extremely rare in North America and has limited capacity for human-to-human transmission. The same commenters stated maintaining the *Brucella* species as select agents causes considerable burden to the research community, impairing necessary scientific developments of diagnostic tools and vaccine delivery methods. Regulatory constraints on *Brucella* species were further correlated to fewer individuals entering the field of *Brucella* research. The commenters agreed removal of these agents would not affect the nationally recognized biosafety measures used by U.S. researchers in handling these agents. Commenters also noted that, regardless of the FSAP's regulation of these agents, *Brucella* species remain endemic worldwide. This change would, however, enhance proactive measures for research and diagnostics.

State veterinarians, state agriculture departments, and livestock associations also support the removal of the *Brucella* species and believe delisting these agents will allow for faster production of improved diagnostics. These groups believe delisting ultimately will reduce the cost for ranching families and other taxpayers when performing the required testing on domestic livestock. These groups stated that current tests often cross-react or result in false positives that threaten animal agribusinesses; the benefits to delist the *Brucella* species are numerous; and the perceived risk to national security is not supported by peer-reviewed science. One group stated removal of these agents is a step toward using a modernized risk-based approach for biosafety and security.

Regulated entities (*i.e.,* entities registered with FSAP under 42 CFR 73.7) reported similar support for removing *B. abortus, B. melitensis,* and *B. suis* and included that they have no concerns with maintaining work using BSL–3/ABSL–3 practices. Commenters stated that guidance will be needed for the regulated community currently registered for these agents on how to remove registered space and/or removal of *Brucella* species from registration while active work is ongoing with *Brucella.*

Public health associations commented that *B. abortus, B. melitensis,* and *B. suis* should be removed because of the low mortality rate and because current molecular and diagnostic methods allow for the effective detection of the agents. Comments stated delisting these agents will remove substantial regulatory requirements on individuals, specifically the Responsible Official and Alternate Responsible Official, and allow for an expanded work staff to contribute to testing. Further, antibiotic treatment regimens are effective and well-established for treating brucellosis due to infections with *B. abortus, B. melitensis,* or *B. suis.*

In accordance with the proposed rule and public comments, HHS/CDC is removing *B. abortus, B. melitensis,* and *B. suis* from the select agent and toxins list upon publication of the final rule. This decision is based on the criteria and considerations outlined in 42 U.S.C. 262a, including the low mortality rate, rare human-to-human transmission, and availability of therapeutics, and is supported by the strong and unanimous support received through public comments in favor of removing these agents (Olsen et al., 2018). Please note that all entities currently working with *B. abortus, B. melitensis,* or *B. suis* will need to remove these agents from their APHIS/CDC Form 1 (registration), including Sections 3, 7A/C (and associated attachments), and 7B. FSAP will be reaching out to affected entities upon publication of this final rule. Further guidance can be found at *https://www.selectagents.gov/efsap/using/form1/docs/eFSAP_Form_1_Amendments_Guidance_508.pdf.*

For brucellosis case reporting and national notification, please visit *https://www.cdc.gov/brucellosis/hcp/surveillance/index.html.*

Additionally, BSL–3/ABSL–3 laboratory safety and containment recommendations for *Brucella* species are outlined in the Biosafety in Microbiological and Biomedical Laboratories (BMBL) found at *https://www.cdc.gov/labs/bmbl/index.html.*

B. Nomenclature and Other Changes in the Select Agent and Toxin List

HHS/CDC proposed to amend the select agent list by updating ''monkeypox virus'' to the regulated virus variant ''Mpox virus (clade I).'' Initially, HHS/CDC based this change on the World Health Organization (WHO) recommendation to adopt a new disease name from monkeypox to mpox (*https://www.who.int/news/item/28-11-2022-who-recommends-new-name-for-monkeypox-disease*). This was updated in the International Classification of Diseases (ICD) system (*https://icd.who.int/browse/2024-01/mms/en#160886685*).

Global experts, including the International Committee on the Taxonomy of Viruses, assigned new names to the monkeypox virus variants but not to the virus itself. The virus variants became known as monkeypox virus Clade I (formerly Congo Basin, Central African clade) and Clade II (formerly West African Clade) (*https://www.who.int/news/item/12-08-2022-monkeypox--experts-give-virus-variants-new-names*). These efforts were in part to align the disease name and virus variants with current best naming practices.

FSAP issued guidance during the 2022 mpox outbreak to assist individuals and entities to comply with select agent and toxin regulations after they identified monkeypox virus in diagnostic samples. The guidance clarified that when materials are identified as being or containing monkeypox virus, and the clade is unknown, the materials are considered select agents. The guidance also explained when regulatory exemptions and exclusions would apply. This guidance was issued based on current diagnostic assays not being specific to the monkeypox virus clade.

Based on these considerations and recognition that this change would have implications beyond a change in nomenclature, HHS/CDC will not change the listed agent from ''monkeypox virus'' to ''Mpox virus (clade I).'' The decision to retain the existing listing is to ensure consistency in nomenclature and the regulation of select agent material. FSAP does not include clade-specific designations for other select agents, but the regulations provide exclusions when appropriate. This ensures select agent material is possessed, used, and transferred in accordance with the regulations, which is critically important when clade-specific assays are generally used. Therefore, HHS/CDC is retaining the current listing and monkeypox virus, meaning monkeypox virus with clade unknown is a select agent. Likewise, monkeypox virus identified as clade I is a select agent. The decision to retain the current listing means no changes are made to the regulation of this select agent or the applicable exclusions and exemptions.

As mentioned above, monkeypox virus contains two virus variants, or clades. In 2012, HHS/CDC excluded the West African Clade of monkeypox virus from the select agent regulatory requirements (*https://www.selectagents.gov/sat/exclusions/hhs.htm*). Excluded select agents have been determined to not pose a severe threat to public health and safety and are not regulated as select agents. Though not explicitly proposed in the proposed rule, HHS/CDC has decided to rename the excluded West African Clade monkeypox virus to clade II monkeypox virus. This nomenclature change aligns with WHO recommendations (Ulaeto et al., 2023, *https://www.who.int/news/item/28-11-2022-who-recommends-new-name-for-monkeypox-disease*). This change promotes consistent terminology in global and public health and will not impact regulated entities.

Additionally, HHS/CDC proposed to change SARS coronavirus (SARS–CoV) to ''Severe acute respiratory syndrome coronavirus (SARS–CoV),'' which is the correct nomenclature. This nomenclature change was also supported by two comments and is finalized as proposed.

Though ''Eastern equine encephalitis virus'' is an HHS select agent, the regulations exclude any South American genotype of Eastern Equine Encephalitis Virus from the requirements. HHS/CDC proposed to remove the exclusion regarding South American genotype of Eastern Equine Encephalitis virus as this no longer reflected the appropriate nomenclature, but did not provide the updated virus name. The updated nomenclature of the South American genotype of Eastern Equine Encephalitis virus is ''Madariaga virus.'' HHS/CDC received two comments requesting clarification on whether Madariaga virus would be excluded from regulatory requirements and one comment in favor of this exclusion. The nomenclature of the excluded South American genotype of Eastern Equine Encephalitis virus is finalized as ''Madariaga virus.'' For clarity, 42 CFR 73.3(d)(12) will now read as excluding ''Madariaga virus'' from the regulatory requirements.

Lastly, HHS/CDC proposed the renaming of Ebola virus to the genus *Ebolavirus.* HHS/CDC received 10 public comments that supported renaming Ebola virus to the genus *Ebolavirus* to align with the International Committee on Taxonomy of Viruses (ICTV). None of the commenters provided evidence or rationale for their support of this change. One commenter stated that HHS/CDC should also make it clear that any strain that is similar enough to this genus, whether naturally discovered or artificially derived, should be regarded as a select agent. HHS/CDC will not make any changes based on this comment but does note that any virus

(including separate strains or species) that is classified as being a member of the genus *Ebolavirus* would be subject to the requirements of this part. The renaming of *Ebolavirus* is finalized as proposed.

C. Additional Comments Received

HHS/CDC also received three public comments recommending the removal of monkeypox virus (clade I) from the HHS list of select agents and toxins. One commenter stated that given the virulence and transmission patterns of circulating strains of clade I combined with the similarity of prophylaxis and treatment measures for both clade I and II, they did not feel it should be regarded as a select agent any longer. Another commenter stated that the risk of a severe monkeypox virus (clade I) outbreak in the United States is likely minimal, given the low risk of casual human-to-human transmission; mild clinical symptoms for immunocompetent people; low mortality rate; an FDA-approved, effective vaccine; availability of pharmacotherapy treatment; and a robust healthcare infrastructure and public health response. The final commenter recommended removal of monkeypox virus (clade I), as its status as a select agent could potentially restrict early detection via wastewater surveillance and may lead to unnecessary burdens on healthcare facilities, particularly in under-resourced communities. This commenter stated that removing monkeypox virus (clade I) from the select agent list would remove barriers to rapid diagnosis, ensure equitable access to care, and streamline public health response efforts by increasing accessibility to testing in the event monkeypox virus (clade I) begins to circulate in the United States. The select agent regulations include provisions that exempt diagnostic laboratories from the requirements, as long as these laboratories secure, destroy, and report positive samples. This exemption allows for continued rapid diagnosis, equitable access to care, and a robust public health response effort. As new data from current outbreaks are collected and analyzed, HHS/CDC will take these comments along with future data into consideration during the next biennial review. The review process considers how the agent affects human health, the degree of transmissibility, if there are effective medical countermeasures available, and the needs of vulnerable populations. Appropriate departments and agencies with scientific experts will also be consulted. At present, more data would be needed to support the removal of monkeypox virus from the select agent list, so monkeypox virus will remain on the list as an HHS-only select agent, and monkeypox virus (clade I) will remain a regulated variant.

Additionally, one commenter stated that they do not support the addition of SARS–CoV/SARS–CoV–2 chimeric viruses, which were previously added as a select agent on November 17, 2021. HHS/CDC is not making changes to the final rule based on this comment. A final rule published on March 3, 2023 (88 FR 13322), outlines the basis for adding SARS–CoV/SARS–CoV–2 chimeric viruses resulting from any deliberate manipulation of SARS–CoV–2 to incorporate nucleic acids coding for SARS–CoV virulence factors as an HHS select agent.

One commenter inquired why H2N2 (a subtype of Influenza A virus) was not considered a select agent, especially since NIAID's Laboratory of Infectious Diseases published that the 1957 pandemic strain of H2N2 would most likely cause a pandemic. As mentioned above, changes to the list of select agents and toxins are carefully considered using specific criteria and in consultation with appropriate departments, agencies, and scientific experts. This review also takes into account current data to support changes to the list. FSAP will continue assessing changes to the select agent and toxin list as part of its ongoing biennial review process, but HHS/CDC is not making any changes based on this comment at this time.

Another commenter stated that, given the further development of reverse genetics systems, FSAP should consider oversight of the nucleic acids, in part or in whole, that could be used to create select agents. HHS/CDC is not making any changes based on this comment but does understand that the ability to synthetically create agents capable of posing a severe threat to public health and safety is becoming less difficult because of newer technologies. HHS/CDC will further review the risks posed by these technologies.

One additional public commenter thanked the Federal Government for transparency regarding the criteria for adding/delisting agents and toxins and strongly supported the continued use of these criteria and processes. Another commenter stated that a list-based approach no longer adequately addresses the current biological threat landscape, which includes unknown, accidental, engineered, and naturally occurring hazardous biological agents and toxins. To address the current biological threat landscape, the commenter stated that FSAP should take into account transmissibility, not just pathogenicity, and should move toward a ''tiered, risk-based program'' and away from a ''list-based program.'' HHS/CDC thanks these commenters for their thoughts. HHS/CDC does evaluate transmissibility in the assessments of whether to include an agent in our list, specifically under the direction of the statute that includes contagiousness as a criterion for inclusion. Also, FSAP derives its regulatory authority from section 351A(a)(1) of the Public Health Service Act (42 U.S.C. 262a(a)(1)), which states that HHS/CDC must maintain a list of select agents and toxins. HHS/CDC may consider additional tiering to the list of select agents and toxins at the next biennial review.

D. Retaining Tier 1 Designation of Botulinum Neurotoxin Producing Species of Clostridium

Botulinum neurotoxin, which causes botulism, is a Tier 1 select toxin, and botulinum neurotoxin producing species of *Clostridium* are a Tier 1 select agent, regulated by HHS/CDC. In the 2024 proposed rule, HHS/CDC requested comment on the proposal to retain botulinum neurotoxin producing species of *Clostridium* as an HHS select agent, but no longer designate it as a Tier 1 agent because the organism itself does not normally cause disease. Botulinum neurotoxin would still be designated as a Tier 1 toxin. HHS/CDC received mixed reactions and a total of 14 comments on whether to downgrade botulinum neurotoxin producing species of *Clostridium* from a Tier 1 agent, while keeping it as an HHS select agent.

Nine commenters supported downgrading the agent from Tier 1, three opposed the change, and two comments requested clarification of when nucleic acids that encode for toxic forms of botulinum neurotoxin would be considered Tier 1 or non-Tier 1. One commenter stated the most compelling rationale for no longer designating the agent as Tier 1 is that public health outbreaks with this organism are not likely or projected to be particularly disruptive.

Three commenters did not support the change. They stated that no longer designating botulinum neurotoxin producing species of *Clostridium* as a Tier 1 select agent—while keeping botulinum neurotoxin as a Tier 1 toxin—would introduce ambiguity to procedures related to storage, possession, use, and in the event of an accidental release. One commenter stated that if the neurotoxin remains as

a Tier 1 agent and regulatory requirements are only reduced for the organism, it could potentially cause violations relating to an entity producing the toxin in an unregulated manner.

One commenter recommended that if botulinum neurotoxin remains a Tier 1 agent, then botulinum neurotoxin producing species of *Clostridium* should also remain as Tier 1. Another commenter pointed out that HHS/CDC would need to provide extensive guidance regarding differentiating between experiments or steps in experiments that include both the agent and toxin that require Tier 1 personnel and practices versus non-Tier 1 personnel and practices if this change were to take effect. Both commenters recommended that the agent, toxin, and regulated nucleic acids all be regulated as either non-Tier 1 or Tier 1 because regulating the related materials differently would create a substantial administrative burden to registered entities.

HHS/CDC agrees that public health outbreaks are unlikely to occur with botulinum neurotoxin producing species of *Clostridium.* Per Executive Order 13546, ''Optimizing the Security of Biological Select Agents and Toxins in the United States,'' botulinum neurotoxin producing species of *Clostridium* do not pose a great risk of deliberate misuse with the most significant potential for mass casualties, and therefore do not meet the standard of Tier 1. However, in accordance with several other comments, HHS/CDC agrees that downgrading the agent (or nucleic acids encoding for toxic forms of botulinum neurotoxin) from Tier 1, while continuing to regulate botulinum neurotoxin as a Tier 1 toxin would require registered entities to differentiate between the applicable regulatory requirements, which may cause confusion. Likewise, establishing different regulatory standards for the select agent and related toxin would create challenges for HHS/CDC in assessing compliance. The agent has the inherent ability to produce Tier 1 toxin. In consideration of the logistical challenges raised in the comments referenced above, HHS/CDC will continue to regulate botulinum neurotoxin producing species of *Clostridium* as a Tier 1 select agent.

E. No Addition of Hantaviruses

In response to the 2024 proposed rule, HHS/CDC received nine public comments that unanimously supported the proposal to not add Hantaviruses [Sin Nombre virus (SNV), Andes virus (ANDV), Hantaan virus (HTNV), and Dobrava virus (DOBV)] to the select agent and toxins list. Eight commenters did not offer a rationale or evidence for their stance; however, one commenter stated that because there is no evidence of sustained person-to-person transmission of SNV, ANDV, HTNV, or DOBV, they concurred with the proposal not to add these viruses to the select agent list. Given the limited direct person-to-person transmission and difficulty propagating in a laboratory setting, it is unclear whether Hantaviruses would pose a severe threat to public health and safety. In accordance with the criteria and considerations for determining whether to include an agent or toxin on the list as articulated in 42 U.S.C. 262a, as proposed and in addition to the unanimous support for not adding these agents via public comment, HHS/CDC will not be adding SNV, ANDV, HTNV, and DOBV as HHS select agents.

F. Toxin Review: Changes to Exclusion Limits for Short, Paralytic Alpha Conotoxins

In response to the 2024 proposed rule, HHS/CDC received eight public comments that unanimously supported the proposal to increase the exclusion amount for short, paralytic alpha conotoxins from 100 mg to 200 mg. HHS/CDC proposed this change based on assessments of lethal doses of conotoxin compared to other regulated toxins and the amount of the toxin that would be needed if a bad actor sought to weaponize it. To assess the amount necessary to weaponize a biological toxin, the Department of Homeland Security (DHS) developed toxin parameters and attack scenarios for potential inhalation and ingestion exposures to select toxins. The DHS models determined the impact of the dissemination of varying concentrations of toxins on public health. HHS/CDC reviewed the DHS models, and the lethal doses of conotoxins are comparable to other regulated toxins with a much higher permissible amount. Based on the DHS model and the public comments mentioned above, HHS/CDC is raising the exclusion limit for conotoxin from 100 mg to 200 mg as proposed.

G. Designation of Nipah virus as a Tier 1 Select Agent

In the 2024 proposed rule, HHS/CDC sought public comment on whether Nipah virus should be identified as a Tier 1 select agent because of its human transmissibility, high case fatality rate, low infectious dose, high severity of illness, and severity of long-term effects.

HHS/CDC received a total of 10 comments on this proposal. One commenter was in favor of designating Nipah virus as a Tier 1 select agent, especially given the known person-to-person transmissibility of the virus. There were nine commenters against this change. Eight of these commenters stated the justification is not sufficient support for designating Nipah virus as a Tier 1 select agent over other agents on the select agent list that are Risk Group 4 pathogens. One commenter thought it was unclear what value the Tier 1 designation would have for Nipah virus.

CDC disagrees with these commenters. Executive Order 13546, ''Optimizing the Security of Biological Select Agents and Toxins in the United States,'' directs the HHS Secretary to designate a subset of select agents and toxins as Tier 1 that present the greatest risk of deliberate misuse with the most significant potential for mass casualties or devastating effects to the economy, critical infrastructure, or public confidence. Nipah virus has high human transmissibility; a high case fatality rate (estimated between 40–100%); a low infectious dose (ranging from $10^1 - 10^7$ plaque forming units depending on route of infection); high severity of illness; and severe long-term effects, including neurological complications including encephalopathy, cranial nerve palsies, and dystonia (Sejvar et al., 2007 and Lo et al., 2008).

For these reasons, HHS/CDC is designating Nipah virus as a Tier 1 select agent.

H. Addition of a Footnote to the HHS Select Agent and Overlap Select Agent List

In the 2024 proposed rule, HHS/CDC received one public comment that supported the proposal to add a footnote to the list of HHS and Overlap select agents indicating that the current ICTV nomenclature for select agent viruses, if different from that published in the HHS regulations, will be available on the FSAP website (*https://www.selectagents.gov*). This commenter stated that the FSAP website is a good place to provide this information. As proposed, HHS/CDC will proceed with adding a footnote to the list for HHS and Overlap select agents for this purpose.

I. Summary of Final Rule Provisions

In summary of the discussions in section II. of this rule, HHS/CDC is finalizing these revisions to the Federal Select Agent Program at 42 CFR part 73:

- Remove *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agent list.
- Update the nomenclature of select agents:
  - Change ''SARS coronavirus (SARS–CoV)'' to ''Severe acute respiratory syndrome coronavirus (SARS–CoV)'' to correct the nomenclature;
  - Rename the exclusion of ''South American genotype of Eastern Equine Encephalitis virus'' to ''Madariaga virus'';
  - Rename the exclusion of ''West African Clade of Monkeypox virus'' to ''clade II monkeypox virus'';
  - Rename Ebola virus to *Ebolavirus* in accordance with the recent taxonomic change by the International Committee on Taxonomy of Viruses (ICTV);
- Retain nomenclature of monkeypox virus;
- Retain designation of botulinum neurotoxin producing species of *Clostridium* as a Tier 1 agent;
- No addition of Hantaviruses: specifically not adding Sin Nombre virus (SNV), Andes virus (ANDV), Hantaan virus (HTNV), and Dobrava virus (DOBV) to the select agent list;
- Increase the exclusion amount for short, paralytic alpha conotoxins from 100 mg to 200 mg;
- Designate Nipah virus as a Tier 1 Select agent;
- Add a footnote to the list for HHS and Overlap select agents indicating that the current nomenclature will be available on the FSAP website (*https://www.selectagents.gov*).

III. Alternatives Considered

Under 42 U.S.C. 262a(a)(2), the HHS Secretary must review and republish the list of HHS select agents and toxins at least biennially. This ensures scientific advancements and gained knowledge are applied to each agent and toxin on the list.

Below are reasonable regulatory alternatives considered regarding key individual provisions listed in this final rule.

This final rule contains several updates to outdated nomenclature of agents, including monkeypox virus, Severe acute respiratory syndrome coronavirus (SARS–CoV), and Ebolavirus. Retaining outdated nomenclature is not scientifically accurate and causes confusion when organizations seek to be in compliance with the regulations. Retaining outdated nomenclature can also cause discrepancies between HHS/CDC and other global health organizations. There is a low, one-time cost associated with updating nomenclature. The alternative of finalizing the rule without the proposed changes, *i.e.,* retaining outdated nomenclature, is not feasible or accurate.

Several changes in this final rule also ensure continued compliance with E.O. 13546.

If HHS/CDC were to retain Nipah virus without a Tier 1 designation, the select agent and toxin list would have an agent that has a great risk of deliberate misuse with the potential for mass casualties, like other Tier 1 select agents, but without the additional provisions outlined for Tier 1 select agents and toxins. These additional provisions include advanced security even compared to non-Tier 1 agents, laboratory personnel enrollment in an entity-specific Occupational Health Program, and that entity-specific risk assessments include Nipah virus as a Tier 1 agent. Not having Nipah virus designated as Tier 1 select agent could potentially result in entities or personnel handling the agent incorrectly, causing public health, biosafety, and biosecurity concerns. It also would not enable FSAP to ensure and require compliance with the enhanced Tier 1 biosafety and biosecurity requirements provided for in the regulations.

All entities currently registered with FSAP for Nipah virus are also registered for other Tier 1 select agents and toxins. Therefore, these entities have Tier 1 provisions in place already that can be applied to Nipah virus. If HHS/CDC were to retain Nipah virus as a select agent without Tier 1 designation, the department and agency would be out of compliance with E.O. 13546. It could also potentially cause public health and biosecurity concerns in that the agent is not handled appropriately. Nipah virus has high human transmissibility; a high case fatality rate (estimated between 40–100%); a low infectious dose; high severity of illness; and severe long-term effects.

Along similar reasoning, new models from DHS illustrate the lethal doses of conotoxins are comparable to other regulated toxins with a much higher permissible amount. The alternative to not raising the permissible toxin limit for short, paralytic alpha conotoxins would lead to irregularities of regulatory application as it pertains to select toxins. Keeping the permissible toxin limit at 100 mg for short, paralytic alpha conotoxins could prevent research and advancement of understanding the select toxin, with no advancement on biosafety and biosecurity. The raised permissible toxin limit of 200 mg will allow more research to occur with the select toxin with no effect on public health and safety. It is important that HHS/CDC considers new data while reviewing the select agent and toxin list to ensure the list is in accordance with criteria and considerations as articulated in 42 U.S.C. 262a.

Similarly, the final rule does not include adding Hantaviruses (*i.e.,* Sin Nombre virus (SNV), Andes virus (ANDV), Hantaan virus (HTNV), and Dobrava virus (DOBV)) to the list as was initially proposed in the ANPRM. Adding Hantaviruses to the list would lead to the agency regulating agents that are not proven to pose a severe threat to public health and safety. Hantaviruses have limited direct person-to-person transmission and are difficult to propagate in a laboratory setting. At this time, research shows it is not certain that Hantaviruses require any regulation in accordance with the criteria and considerations as articulated in 42 U.S.C. 262a. If FSAP were to begin regulating Hantaviruses, there would be costs associated with onboarding, inspecting, and managing those entities that would be required to register with FSAP, with no current need to regulate the agents.

The most significant impact of this rule is the delisting of *Brucella* species, and HHS/CDC has carefully considered the alternative of delisting the agents, which would be retaining the agents on the list and continuing regulating these agents.

Retaining the *Brucella* species on the list has several economic, agricultural, and economic effects with little biosecurity benefit. Most notably, retaining *Brucella* species on the list prevents researchers from progressing advancement of science with regards to study of the agents and development of countermeasures for this agent by subjecting these laboratories to FSAP's regulatory authority. These agents are designated as Risk Group 3 agents, meaning entities and organizations will continue working with these agents at the appropriate biosafety level (Biosafety Level 3), as outlined in the national standard Biosafety in Microbiological and Biomedical Laboratories, 6th edition.

Continuing regulation of *Brucella melitensis, suis,* and *abortus* has a one-time cost of approximately $29k to an entity that wishes to register with FSAP for work with these agents. This cost to the regulated community, due to the reasons listed above, does not enhance biosafety and biosecurity, and may be a regulatory burden to entities that wish to advance understanding of the agent and research medical countermeasures.

There is no alternative to foregoing review of the select agent and toxin list.

This rulemaking is intended to meet the regulatory mandate under 42 U.S.C. 262a(a)(2) where the HHS Secretary must review and republish the list of HHS select agents and toxins at least biennially. CDC conducts the biennial review in consultation with CDC's Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). An alternative to the rule was to not delist three select agents, not raise the exclusion amount of a regulated toxin, not update nomenclature, and not add the Tier 1 designation to a select agent. Retaining the *Brucella* species would maintain the current status quo; it does not consider that these agents no longer pose a severe threat to public health and safety, does not promote better research and vaccine development, and does not align with USDA's decision to delist the *Brucella* agents. Additionally, the alternative to not amend the select agent list is inconsistent with USDA's rule, creating regulatory conflict. In addition, this option is not consistent with the public comment received to support amending the select agent list.

After carefully considering the technical input of subject-matter experts, both within the Federal Government and from public comments, and recommendations from Federal advisory groups, HHS/CDC is finalizing the changes listed in section II, part I (Summary of Final Rule Provisions) above to the list of select agents and toxins.

IV. Required Regulatory Analyses

The HHS/CDC modifications to the list of select agents and toxins addressed in this rule will benefit producers, research and reference laboratories, and state and Federal oversight agencies, while also maintaining adequate program oversight of select agents and toxins. Specifically, HHS/CDC is removing *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agent and toxin list; updating the nomenclature for several select agents (''SARS coronavirus (SARS–CoV),'' removing the exclusion regarding ''South American genotype of Eastern Equine Encephalitis virus,'' renaming the exclusion regarding ''West African Clade of Monkeypox virus,'' and ''Ebola virus''); retaining the nomenclature of Monkeypox virus; retain the Tier 1 designation of Botulinum neurotoxin producing species of *Clostridium;* no addition of Hantaviruses to the current select agent and toxin list; increase the exclusion amount for short, paralytic alpha conotoxins from 100 mg to 200 mg; and designating Nipah virus as a Tier 1 Select Agent. HHS/CDC is also adding a footnote to the list for HHS and Overlap select agents indicating that the current nomenclature will be available on the website (*www.selectagents.gov*).

Currently, 236 entities are registered with the Federal Select Agent Program (FSAP). Of these entities, there are 13 private entities, 30 Federal entities, 42 commercial entities, 84 academic entities, and 67 state entities (registered with either APHIS or CDC, depending on the select agents and toxins they work with). Less than 4 percent of all firms operating within these North American Industry Classification categories are considered to be small entities. This final rule will not have a significant economic impact on a substantial number of small entities.

The benefits of strengthened safeguards against the unintentional or deliberate release of a select agent or toxin greatly exceed the costs of complying with the regulatory requirements. As an example of losses that can occur due to a select agent release, the October 2001 anthrax attacks caused 5 fatalities and 17 illnesses, disrupted business and government activities (including $2 billion in lost revenues for the U.S. Postal Service) and required more than $23 million to decontaminate one Senate office building and $3 billion to decontaminate postal facilities and procure mail-sanitizing equipment. Deliberate introduction greatly increases the probability of a select agent becoming established and causing wide-ranging and devastating impacts to the economy, other disruptions to society, and diminished confidence in public and private institutions.

HHS has examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094, entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999). This final rule does not meet the criteria set forth in 5 U.S.C. 804(2) under the Congressional Review Act.

A. Executive Orders 12866, 13563, and 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 14094 (the Modernizing E.O.) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of 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) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering 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 this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. OIRA has determined that this rule is significant.

Statement of Need

As discussed above, HHS/CDC is removing *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agent list; updating the nomenclature for several select agents (''SARS coronavirus (SARS–CoV),'' the exclusion regarding ''South American genotype of Eastern Equine Encephalitis virus,'' the exclusion regarding ''West African Clade of Monkeypox virus,'' and ''Ebola virus''); retaining the nomenclature of Monkeypox virus; retaining the Tier 1 designation of Botulinum neurotoxin producing species of *Clostridium;* not adding Hantaviruses to the current select agent list; increasing the exclusion amount for short, paralytic alpha conotoxins from 100 mg to 200 mg; and designating Nipah virus as a Tier 1 Select Agent. HHS/CDC is also adding a footnote to the list for HHS and Overlap select agents indicating that the current nomenclature will be available on the website (*www.selectagents.gov*).

Some of the regulatory changes described in the preamble and reported below are a minor in nature, and as

such, are expected to have minimal impact on the costs and benefits of current regulations, except for the one-time costs of updating official documents for CDC. These regulatory changes are the updates to the nomenclature for several select agents (''SARS coronavirus [SARS–CoV],'' the exclusion regarding ''South American genotype of Eastern Equine Encephalitis virus,'' the exclusion regarding ''West African Clade of Monkeypox virus.'' and ''Ebola virus); retaining the nomenclature of *Monkeypox virus,* retaining the Tier 1 designation of Botulinum neurotoxin producing species of *Clostridium;* no addition of Hantaviruses to the current select agent list*;* increasing the exclusion amount for short, paralytic alpha conotoxins from 100 mg to 200 mg; and designating Nipah virus as a Tier 1 Select Agent.

This final rule changes the regulatory baseline by removing *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agent list. As of July 2024, of the 236 registered entities with FSAP, 112 were registered for select agents and toxins including *Brucella abortus, melitensis,* and/or *suis,* and three of those entities were registered for only *Brucella* species. CDC expects the three entities registered for only *Brucella* species will deregister from FSAP, which HHS/CDC expects will cause minimal savings for these laboratories, as well as CDC. The remaining 109 entities will likely submit amendments to their registrations to remove the delisted agents while maintaining the rest of their registration. Therefore, HHS/CDC expects no change in the costs for these entities; there is no cost to deregister with FSAP. Because of the small number of entities that will deregister due to the delisting of *Brucella* species, the cost-savings to the government will be minimal, roughly a net value (benefits-costs) of $8,795.78 in one-time cost savings.

Costs

This final rule does not impose any mandatory costs on the public and benefits laboratories who choose to develop research using *Brucella abortus, Brucella melitensis,* and *Brucella suis.* Nonetheless, the changes in this rule will have a minimal economic impact on CDC due to the process of updating official documentation for the implementation of the changes listed in this final rule.

To estimate the cost to CDC of including the changes listed in this final rule in official documents, HHS/CDC assumed that 1 GS–14, step 5 employee and one GS–15, step 5 employee each spend 40 hours (*i.e.,* 80 hours in total) for any updates to cite the language in this final rule. The hourly wage rates for two employees based in Washington-Baltimore-Arlington, DC-MD-VA-WV-PA are $75.70 (GS–14) and $89.03 (GS–15).[1] To account for the non-wage benefits, we multiplied the wage cost by two to result in a total cost estimate of $13,178 (table 1).

TABLE 1—SUMMARY OF THE ONE-TIME COSTS IN 2024 USD TO UPDATE OFFICIAL DOCUMENTS FOR DEPARTMENT OF STATE (DOS), CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) COSTS FROM UPDATING OFFICIAL DOCUMENTS WITH THE CHANGES IN THIS FINAL RULE

Agency	Cost components	Hourly wage rate[2]	Multiplier non-wage benefits and overhead	Total
CDC	80 hours split between GS–14, step 5, and GS–15, step 5 levels.	$82.4	2	$13,178
Total				13,178

The changes in this final rule that are minor in nature and should not result in an additional regulatory burden to regulated entities. Instead, they should help reduce costs by reducing confusion regarding the requirements for the possession, use, and transfer of biological select agents and toxins.

The elimination of *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agents and toxins list should not result in additional regulatory burden for CDC or regulated entities as this change would imply less regulatory burden. However, one concern about this reduction in regulatory burden is that it could cause costs or losses to the general public by increasing the risk of *Brucella abortus, Brucella melitensis,* and *Brucella suis* being accessed without authorization, stolen, lost, or released. Although this cost cannot be measured until after the regulation has been applied, HHS/CDC expects that the risk of *Brucella abortus, Brucella melitensis,* and *Brucella suis* being accessed without authorization, stolen, lost, or released would be minimal as the current recommended best practices in place to mitigate these biosafety and biosecurity risks (*Biosafety in Microbiological and Biomedical Laboratories*) will remain in place. USDA's prevention and eradication efforts against Brucellosis from livestock in the United States through the National Bovine Brucellosis Surveillance Plan and the National Brucellosis Eradication program will continue even with the changes in this rule.

Another concern linked to the reduction in regulatory burden to agencies and laboratories is that it could increase cost to the general public by increasing the risk of *Brucella abortus, Brucella melitensis,* and *Brucella suis* becoming an agent of interest to be used as a bioweapon. Although this risk cannot be measured by HHS/CDC currently, HHS/CDC expects this risk to be minimal as recent literature indicates that *Brucella*'s ''minimal mortality, availability of treatment options, protracted inoculation period and the emergence of new, more virulent potential weapons means that its inclusion among agents of bioterrorism is nowadays mainly of historical significance.'' [3]

Increasing the exclusion limits for short paralytic alpha conotoxins will have a negligible impact on costs for regulated entities. There are only four registered entities currently working with these conotoxins, and increasing

[1] U.S. Office of Personnel and Management. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2024/general-schedule-gs-salary-calculator/* accessed on September 4, 2024.

[2] U S Office of Personnel Management: General Schedule (*opm.gov*).

[3] Pappas, G., Panagopoulou, P., Christou, L., & Akritidis, N. (2006). Biological weapons: Brucella as a biological weapon. *Cellular and molecular life sciences CMLS, 63,* 2229–2236.

the exclusion limit will allow for additional research and testing without the additional burden of select agent and toxin regulatory requirements.

Change to the designation of Nipah virus as a Tier 1 select agent will have a negligible impact on costs for regulated entities. All eight of the entities that are currently registered for Nipah virus are already registered for other Tier 1 select agents; therefore they are already complying with the additional Tier 1 requirements and will not incur additional costs with this change.

Benefits

HHS found the benefits of this rulemaking to outweigh the costs to regulated entities as all the changes described in this final rule have a zero cost to regulated entities. Furthermore, these changes are likely to reduce regulated entities' costs by simplifying their processes and reducing some of the regulatory burden. HHS/CDC is unable to quantify the cost reductions to regulated entities due to the minor changes but expects this final rule will potentially simplify processes for them. Nonetheless, at a minimum, costs of these changes are zero for regulated entities, thus any simplification of processes coming out of this change implies a gain.

As of July 2024, of the 236 registered entities with APHIS and CDC, 112 were registered for select agents and toxins including *Brucella abortus, melitensis,* and/or *suis,* and three of those entities are registered for only *Brucella* species. CDC expects the three entities registered for only *Brucella* species will deregister from FSAP, which HHS/CDC expects to cause small savings for these entities. Although FSAP registration does not have a direct cost for regulated entities, HHS/CDC estimates that it takes 12 hours of labor a week for eight months to perform the registration processes required to get an FSAP registration. These activities are usually performed by a Responsible Official/Biosafety Officer or an Alternate Responsible Official/Biosafety Officer. The GS scale for these professionals typically ranges from GS–9 to GS–14. Assuming a GS–14 scale, the hourly wage rate based in Washington-Baltimore-Arlington, DC-MD-VA-WV-PA is $75.70. Thus, the estimated one-time cost of registration with FSAP for an entity is $29,069. This estimated one-time cost savings will apply to any entities not registered with FSAP that wish to work with *Brucella* species. Renewal of registration with FSAP is a negligible cost as the process takes less than 10 minutes. Because three entities are currently registered solely for *Brucella* species, the exclusion of *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agent list means they will not need to participate in the registration renewal process, which is a negligible cost.

HHS/CDC expects that the deregistration of the three entities registered only for *Brucella* species with FSAP will also cause small one-time cost-savings to CDC, as CDC personnel will no longer follow these entities throughout the registration process. HHS/CDC estimates that CDC personnel spend about three hours a week for six months reviewing laboratories' Standard Operating Procedures (SOPs) for entity's registration applications to FSAP. Assuming that the CDC staff reviewing SOPs is GS–13 step 5, the hourly salary in 2024 dollars would be $64.06, thus the one-time cost savings to CDC of reviewing the SOPs required for one entity's registration is $1,153.08, and this implies a total of $3,459.24 in cost savings for CDC of not going through the registration process of the three entities that would deregister after the publication of this rule.

In addition to these cost savings CDC will also have cost savings from not having to perform inspections on the three entities that are ending their FSAP registrations as a result of the exclusion of *Brucella abortus, Brucella melitensis,* and *Brucella suis* from the select agent list. Assuming that the personnel performing the inspections are a GS–12 step 5, and a GS–13 step 5 inspectors, the hourly wage is $53.87, and $64.06, respectively. Using an overhead multiplier of 2 to take into account non-wage benefits, and considering the travel costs of inspections, HHS/CDC estimates one-time costs savings of $10,564.18 per inspection not performed per entity (table 2). Since each entity goes through at least one inspection during registration, HHS/CDC estimates CDC will have a cost savings of at least $31,692.54 due to inspections not performed for the three entities deregistering from FSAP.

TABLE 2—ESTIMATED ANNUAL CDC COST-SAVINGS IN 2024 USD FOR INSPECTION OF EACH FACILITY ONLY WORKING WITH BRUCELLA

Type of CDC staff	Number of staff	Number of inspections per year	Number of hours spent per inspection	Average hourly wage rate [4]	Overhead multiplier	One-time annual benefit
GS–12 (step 5)	1	0.5	40	$53.87	2	$4,309.6
GS–13 (step 5)	1	0.5	40	64.06	2	5,124.8
Total						9,438.4
Travel costs	Airfare [5]	417.79/per person	Hotel, food, lodging [6]	145.10/per person		1125.78
Total (Personnel + Travel).						10,564.18

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, should recognize distributive impacts and equity, to the extent permitted by law. HHS/CDC developed this final rule in a manner consistent with these requirements. 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

[4] U.S. Office of Personnel Management: General Schedule (opm.gov).

[5] Bureau of Transportation Statistics: Air Fares √ Bureau of Transportation Statistics (bts.gov).

[6] FY 2024 Federal Per Diem Rates: FY 2024 Federal Per Diem Rates (federalpay.org).

exchange of ideas. HHS/CDC developed this final rule in a manner consistent with these requirements. In administering FSAP, HHS, along with USDA, regularly interact with the affected registered entities via email, phone, online webinars, through the eFSAP information system, and through designated points of contact at registered entities. All changes result from entity questions received or interaction with registered entities who have contacted FSAP when they had questions or regulatory interpretation requests. Therefore, HHS/CDC believes this final rule serves the public interest. Additionally, HHS/CDC encouraged public participation and informed registered entities of the proposed rule via a Select Agent (SA) Gram and a GovD message to ensure they were aware and had a chance to provide public comments. The FSAP website (*www.selectagents.gov*) was updated to share the proposed changes and provided a link to web visitors so that they could review and provide comments on the proposed rule. Lastly, HHS/CDC emailed outreach notes summarizing the proposed rule directly to national partner organizations (*e.g.,* the Association of Public Health Laboratories, American Society for Microbiology, American Biological Safety Association) so that they could share among their constituents. As discussed above, HHS/CDC carefully reviewed and considered public comments in the development of this final rule.

B. The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

HHS/CDC examined the impacts of this final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless HHS/CDC certifies that the final rule is not expected to have a significant economic impact on a substantial number of small entities, the RFA, as amended by SBREFA, requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Currently, 236 entities are registered with FSAP. Of these entities, there are 13 private entities, 30 Federal entities, 42 commercial entities, 84 academic entities, and 67 state entities (registered with either APHIS or CDC, depending on the select agents and toxins they work with). Less than 4 percent of all firms operating within these North American Industry Classification System (NAICS) categories are considered to be small entities. HHS/CDC estimates that 13 entities will be impacted by the changes in this rule. Of these 13 entities, which are not considered small, 4 are associated with colleges, universities, and professional schools; 2 are categorized as research and development in biotechnology; and 7 are part of research and development in the physical, engineering, and life sciences. Applying NAICS' estimation of less than 4 percent of entities classified as small, we find that not even one small entity will be affected by the changes in this rule. Based on our analysis as described above, we certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. In addition, no public comments were received from any small entities on the RFA section.

Based on the information above, this regulatory action is not a major rule as defined by sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

C. Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), HHS/CDC determined that the Paperwork Reduction Act does apply to information collection and recordkeeping requirements included in this rule. This final rule focuses on the select agent and toxins list. Any changes to burden hours caused by the removal of *Brucella abortus, Brucella suis,* and *Brucella melitensis* from the list of select agents and toxins will be submitted for consideration by OMB under the existing approved PRA package (Possession, Use, and Transfer of Select Agents and Toxins (42 CFR part 73)). Other changes put forth in this final rule, *i.e.,* updating entity registrations to reflect the nomenclature updates to the list, will be instituted by FSAP, resulting in no additional paperwork for the regulated community.

D. E.O. 12988: Civil Justice Reform

This rule has been reviewed under E.O. 12988, Civil Justice Reform. Once the final rule is in effect, HHS/CDC notes that (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

E. E.O. 13132: Federalism

HHS/CDC reviewed this final rule in accordance with Executive Order 13132 regarding federalism and determined that it does not have federalism implications. The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

In accordance with section 361(e) of the PHSA [42 U.S.C. 264(e)], nothing in this rule would supersede any provisions of state or local law except to the extent that such a provision conflicts with this rule.

F. Plain Language Act of 2010

Under the Plain Language Act of 2010 (Pub. L. 111–274, October 13, 2010), executive departments and agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in issuing this rule consistent with the Federal Plain Writing Act guidelines.

V. References

Government Accountability Office. 2023. Public Health Preparedness: HHS Could Improve Oversight of Research Involving Enhanced Potential Pandemic Pathogens (GAO–23–105455). *https://www.gao.gov/products/gao-23-105455*

Lo, M., et al. The Emergence of Nipah virus, a Highly Pathogenic Paramyxovirus. J Clin Virol, 2008. 43(4): p. 396–400.

Olsen, S., et al. *Biosafety Concerns Related to Brucella and its Potential Use as a Bioweapon.* Applied Biosafety, 2018. 23(2): p. 77–90. Biosafety Concerns Related to Brucella and Its Potential Use as a Bioweapon | Applied Biosafety (*liebertpub.com*).

Sejvar, J., et al. Long-term Neurological and Functional Outcome in Nipah virus Infection. Ann Neurol. 2007 Sep;62(3): p. 235–42.

Ulaeto, D., et al. New Nomenclature for mpox (monkeypox) and Monkeypox Virus Clades. The Lancet: Infectious Diseases, 2023. 23(3): pg 273–275. *https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(23)00055-5/fulltext.*

List of Subjects in 42 CFR Part 73

Biologics, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Transportation.

For the reasons discussed in the preamble, HHS amends 42 CFR part 73 as follows:

PART 73—SELECT AGENTS AND TOXINS

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

Authority: 42 U.S.C. 262a.

■ 2. Section 73.3 is amended by:
■ a. Revising paragraph (b);
■ b. In paragraph (d)(7), removing the text ''100 mg of Conotoxins'' and adding in its place the text ''200 mg of Conotoxins''; and
■ c. Revising paragraph (d)(12).

The revisions read as follows:

§ 73.3 HHS select agents and toxins.

* * * * *

(b) HHS select agents and toxins [1] are:

(1) Abrin.

(2) *Bacillus cereus* Biovar *anthracis.**

(3) Botulinum neurotoxins.*

(4) Botulinum neurotoxin producing species of *Clostridium.**

(5) Conotoxins (Short, paralytic alpha conotoxins containing the following amino acid sequence $X_1CCX_2PACGX_3X_4X_5X_6CX_7$).[2]

(6) *Coxiella burnetii.*

(7) Crimean-Congo hemorrhagic fever virus.

(8) Diacetoxyscirpenol.

(9) Eastern equine encephalitis virus.

(10) *Ebolavirus* *

(11) *Francisella tularensis.**

(12) Lassa fever virus.

(13) Lujo virus.

(14) Marburg virus.*

(15) Monkeypox virus.

(16) Reconstructed replication competent forms of the 1918 pandemic influenza A virus containing any portion of the coding regions of all eight gene segments (Reconstructed 1918 influenza A virus).

(17) Ricin.

(18) *Rickettsia prowazekii.*

(19) Severe acute respiratory syndrome coronavirus (SARS–CoV).

(20) SARS–CoV/SARS–CoV–2 chimeric viruses resulting from any deliberate manipulation of SARS–CoV–2 to incorporate nucleic acids coding for SARS–CoV virulence factors.

(21) Saxitoxin.

(22) South American hemorrhagic fever virus: Chapare.

(23) South American hemorrhagic fever virus: Guanarito.

(24) South American hemorrhagic fever virus: Junin.

(25) South American hemorrhagic fever virus: Machupo.

(26) South American hemorrhagic fever virus: Sabia.

(27) Staphylococcal enterotoxins (subtypes A,B,C,D,E).

(28) T–2 toxin.

(29) Tetrodotoxin.

(30) Tick-borne encephalitis virus: Far Eastern subtype.

(31) Tick-borne encephalitis virus: Siberian subtype.

(32) Kyasanur Forest disease virus.

(33) Omsk haemorrhagic fever virus.

(34) Variola major virus (Smallpox virus).*

(35) Variola minor virus (Alastrim).*

(36) *Yersinia pestis.**

[1] Please refer to *https://www.selectagents.gov* for current information on historical or proposed nomenclature for the HHS select agents on the list.

[2] C = Cysteine residues are all present as disulfides, with the 1st and 3rd Cysteine, and the 2nd and 4th Cysteine forming specific disulfide bridges; The consensus sequence includes known toxins a-MI and a-GI (shown above) as well as a-GIA, Ac1.1a, a-CnIA, a-CnIB; X1 = any amino acid(s) or Des-X; X2 = Asparagine or Histidine; P = Proline; A = Alanine; G = Glycine; X3 = Arginine or Lysine; X4 = Asparagine, Histidine, Lysine, Arginine, Tyrosine, Phenylalanine or Tryptophan; X5 = Tyrosine, Phenylalanine, or Tryptophan; X6 = Serine, Threonine, Glutamate, Aspartate, Glutamine, or Asparagine; X7 = Any amino acid(s) or Des X and; ''Des X'' = ''an amino acid does not have to be present at this position.'' For example, if a peptide sequence were XCCHPA then the related peptide CCHPA would be designated as Des-X.

* * * * *

(d) * * *

(12) Madariaga virus and any Clade II Monkeypox provided that the individual or entity can identify that the agent is within the exclusion category.

* * * * *

■ 3. Section 73.4 is amended by revising paragraph (b) to read as follows:

§ 73.4 Overlap select agents and toxins.

* * * * *

(b) Overlap select agents and toxins [1] are:

(1) *Bacillus anthracis.**

(2) *Bacillus anthracis* Pasteur strain.

(3) *Burkholderia mallei.**

(4) *Burkholderia pseudomallei.**

(5) Hendra virus.

(6) Nipah virus.*

(7) Rift Valley fever virus.

(8) Venezuelan equine encephalitis virus.

[1] Please refer to *https://www.selectagents.gov* for current information on historical or proposed nomenclature for the Overlap select agents on the list.

* * * * *

Dated: December 11, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–29583 Filed 12–16–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 513

[Docket No. NHTSA–2023–0014]

RIN 2127–AL85

Implementing the Whistleblower Provisions of the Vehicle Safety Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule addresses an important source of motor vehicle safety information and fulfills a requirement in the Motor Vehicle Safety Whistleblower Act (Whistleblower Act) that NHTSA promulgate regulations on the requirements of the Act, in complement to NHTSA's existing whistleblower program. The Whistleblower Act authorizes the Secretary of Transportation to pay an award, subject to certain limitations, to eligible whistleblowers who voluntarily provide original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement, which is likely to cause unreasonable risk of death or serious physical injury, if the information provided leads to the successful resolution of a covered action. This final rule defines certain terms important to the operation of the whistleblower program, outlines the procedures for submitting original information to NHTSA and applying for awards, discusses NHTSA's procedures for making decisions on award applications, and generally explains the scope of the whistleblower program to the public and potential whistleblowers.

DATES:

Effective date: This rule is effective January 16, 2025.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by January 31, 2025.

ADDRESSES: Any petitions for reconsideration should refer to the docket number set forth above (NHTSA–2023–0014) and be submitted to the

Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dylan Voneiff, Office of the Chief Counsel, National Highway Traffic Safety Administration (telephone: (202) 763–8536), email: *dylan.voneiff@dot.gov*; or Daniel Rabinovitz, Office of the Chief Counsel, National Highway Traffic Safety Administration (telephone: (202) 366–5263), email: *daniel.rabinovitz@dot.gov*. The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
II. Final Rule and Responses to Comments
A. General (§ 513.1)
B. Definitions (§ 513.2(b))
i. Collected Monetary Sanctions
ii. Contractor
iii. Covered Action and Related Administrative or Judicial Action
iv. Dealership
v. Employee
vi. Independent Knowledge or Analysis
vii. Original Information
viii. Potential Whistleblower
ix. Whistleblower
C. Procedures for Submitting Original Information (§ 513.4)
D. Confidentiality (§ 513.5)
E. Prerequisites to the Consideration of an Award (§ 513.6)
F. Whistleblowers Ineligible for an Award (§ 513.7)
G. Provision of False Information (§ 513.8)
H. Procedures for Making a Claim for a Whistleblower Award (§ 513.9)
I. Award Determinations (§ 513.10)
J. Appeals of Award Determinations (§ 513.11)
K. Form WB–INFO (Appendix A)
L. Form WB–RELEASE (Appendix B)
M. Form WB–AWARD (Appendix C)
III. Regulatory Analyses and Notices

I. Executive Summary

The Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94, established important protections and incentives for motor vehicle safety whistleblowers. The Motor Vehicle Safety Whistleblower Act (Whistleblower Act), Sections 24351–25352 of the FAST Act, amended the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) to authorize the Secretary of Transportation (the Secretary) to pay an award, subject to certain limitations, to eligible whistleblowers who voluntarily provide original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301, which is likely to cause unreasonable risk of death or serious physical injury, if that information leads to the successful resolution of a covered action. Public Law 114–94, § 24351–52, 129 Stat. 1716 (2015) (codifying ''Whistleblower incentives and protections'' at 49 U.S.C. 30172).

In addition to the statutory whistleblower protections and incentives added by the FAST Act, Congress required NHTSA to promulgate whistleblower regulations.[1] NHTSA's notice of proposed rulemaking (NPRM), published on April 14, 2023,[2] proposed definitions of certain terms important to the operation of the whistleblower program, outlined the procedures for submitting original information to NHTSA and applying for awards, discussed NHTSA's procedures for making decisions on award applications, and generally explained the scope of the whistleblower program to the public and potential whistleblowers.

NHTSA received 14 comments on the NPRM. The proposal garnered comments from whistleblower counsel and advocates, vehicle manufacturers, industry associations, and individuals. These comments are available in the docket for this rulemaking.[3] After considering the public comments, the Agency is issuing this final rule and generally adopting the proposal without significant change.

II. Final Rule and Responses to Comments

In the NPRM, NHTSA proposed adding a new part to its regulations, 49 CFR part 513, to further implement the whistleblower program established by the Whistleblower Act and codified at 49 U.S.C. 30172. The proposal defined certain terms important to the operation of the whistleblower program, outlined the procedures for submitting original information to NHTSA and applying for awards, discussed the Agency's procedures for making decisions on award applications, and generally explained the scope of the whistleblower program to the public and potential whistleblowers. The proposed rule sought to help facilitate the Agency's identification of information provided by whistleblowers to ensure that whistleblowers receive the protections accorded under the statute and to inform the public of those limited circumstances where information that could reasonably be expected to reveal the identity of the whistleblower may be disclosed. NHTSA sought comments on all aspects of the NPRM.

In response to the NPRM, NHTSA received comments from whistleblower counsel and advocates, vehicle manufacturers, industry associations, and members of the general public. Whistleblower counsel and advocates submitting comments were Cohen Milstein Sellers & Toll PLLC (Cohen Milstein); Constantine Cannon LLP (Constantine Cannon); Kohn, Kohn, and Colapinto (Kohn); and the National Whistleblower Center. The individual vehicle manufacturers that commented were Ford Motor Company (Ford) and Hyundai Motor America (Hyundai). The industry associations that submitted comments were the Alliance for Automotive Innovation (Auto Innovators) and the vehicle supplier industry association Motor & Equipment Manufacturers Association (MEMA). NHTSA also received comments from some individuals.

Generally, most commenters shared their support for the creation of a new part to NHTSA's regulations governing NHTSA's whistleblower program. Commenters addressed many aspects of the rule, including the definitions of certain terms, procedures for submitting information and making a claim for an award, eligibility requirements for an award and award determinations. The order of the topics or comments discussed in this document is not intended to reflect the significance of the comment raised or the standing of the commenter. Additionally, this summary of the comments is intended to provide both a general understanding of the overall scope and themes raised by the commenters, as well as give some specific descriptions to provide context.

Whistleblower counsel and advocates generally commented in support of broadening the definition of ''whistleblower,'' ''independent knowledge or analysis,'' and ''covered action.'' These commenters proposed relaxing internal reporting requirements and more specifically defining protections against retaliation. Additionally, these commenters proposed removing agency discretion for granting an award.

Generally, vehicle manufacturers and industry associations commented in support of restricting the definition of whistleblower and the definition of independent knowledge or analysis. Additionally, these commenters suggested broadening disqualifications for an award. Specifically, these

[1] *See* 49 U.S.C. 30172(i).

[2] 88 FR 23276 (Apr. 14, 2023).

[3] *https://www.regulations.gov/document/NHTSA-2023-0014-0001.*

commenters proposed stricter internal reporting requirements and proposed eliminating exceptions to these requirements.

Finally, most individual commenters expressed general support for the goals and content of the proposed rule. Individual commenters focused on the definition of whistleblower and the definition of employee. Additionally, individual commenters expressed concerns about the formalized process to be eligible for an award and the Agency's discretion in granting an award.

This final rule generally adopts the proposal without substantive change. In response to comments, NHTSA has clarified in this final rule the timing for submitting an award claim. In the NPRM, NHTSA proposed a potential whistleblower must file a claim for a whistleblower award by completing the WB–AWARD form and submitting it to NHTSA no later than ninety (90) calendar days from the date of the Notice of Covered Action. This final rule specifies that if the ninetieth day falls on a weekend or federal holiday, the claim deadline is the next business day. NHTSA has also clarified in this final rule that the criminal exclusion is limited to criminal violations decided by a United States federal or state court—not by a foreign tribunal.

While NHTSA also agreed with many other issues raised by commenters, for the reasons discussed below, it does not believe those issues warrant additional or changed regulatory text. After consideration of the comments, NHTSA believes this final rule appropriately balances the need to provide additional guidance on aspects of the statute and Agency's processes, while leaving room for flexibility and case-by-case considerations. As NHTSA has learned through working with numerous whistleblowers since enactment of the FAST Act in 2015, each matter involves unique circumstances. NHTSA will continue to consider these issues as it implements its whistleblower program with the benefit of these new rules and will make future refinements through rulemaking or guidance as necessary and appropriate.

NHTSA maintains information about its whistleblower program on its website, *https://www.nhtsa.gov/laws-regulations/whistleblower-program,* which it will continue to update with additional information and developments.

A. General (§ 513.1)

Proposed rule § 513.1 provided a general description of NHTSA's whistleblower program. Specifically, it stated that Part 513 describes the whistleblower program that the Agency has established to implement the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. 30172; explained the procedures that the potential whistleblower will need to follow to be eligible for an award; and discusses the circumstances under which information that may reasonably be expected to reveal the identity of a whistleblower may be disclosed by NHTSA. Additionally, it cautioned potential whistleblowers to read the procedures carefully because failure to take required steps within the time frames described could result in disqualification from receiving an award.

NHTSA received no comments on proposed § 513.1. NHTSA is adopting § 513.1 as proposed.

B. Definitions (§ 513.2(b))

i. Collected Monetary Sanctions

The NPRM contained a proposed definition clarifying that the term ''collected monetary sanctions'' means monies, including penalties and interest, ordered or agreed to be paid and that have been collected by the United States pursuant to the authority in 49 U.S.C. 30165 or under the authority of 49 U.S.C. 30170. This proposed definition sought consistency with the express terms of the statute, which provides: ''Any amount payable [to a whistleblower] . . . shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment.'' 49 U.S.C. 30172(b)(2).

Prior to publication of the NPRM, stakeholders advocated for court ordered restitution to parties other than the United States to be considered monetary sanctions under the regulation. The NPRM proposed that ''collected monetary sanctions'' cannot reasonably be construed to include such restitution intended to directly compensate victims and other affected third parties (as opposed to penalties paid to the United States).

Commenters Kohn and Constantine Cannon proposed that Congress intended for ''collected monetary sanctions'' to include restitution intended to directly compensate victims or other third parties. Kohn suggested that restitution required by statute is congressional allocation of monies owed to the United States and thus should be considered money collected and allocated by the United States. Kohn proposed that Congress could have decided to allocate those funds in a different way and thus any sanction paid as the result of an enforcement action must be considered a ''collected monetary sanction.''

NHTSA declines to change its proposed definition. The FAST Act, section 31202, appropriates to the Highway Trust Fund amounts equivalent to ''covered motor vehicle safety penalty collections.'' The section defines ''covered motor vehicle safety penalty collections'' as any amount collected in connection with a civil penalty under 49 U.S.C. 30165, ''reduced by any award authorized by the Secretary of Transportation to be paid to any person in connection with information provided by such person related to a violation of Chapter 301 of such title which is a predicate to such civil penalty.'' Based on this section of the FAST Act, it is NHTSA's view that whistleblowers are paid out of the money collected from a paid Safety Act penalty or fine, which is further discussed below with respect to the definition of ''covered action.'' The Safety Act does not give NHTSA authority to reallocate money collected as restitution intended to directly compensate victims or other third parties. Additionally, Congress neither created a victim allocation fund like that created by the Dodd-Frank Act nor did Congress include restitution in its definition of ''monetary sanctions'' as it did in the Dodd-Frank Act.[4] It is NHTSA's view that ''collected monetary sanctions'' does not include restitution intended to directly compensate victims or other third parties because those funds are not ''collected'' by NHTSA.

Additionally, Kohn proposed that any monetary performance obligations, including agreements to pay a certain amount towards a performance obligation,[5] should be included in the definition of collected monetary sanctions. Kohn suggested that exclusion of money used to satisfy performance obligations would give discretion to NHTSA to manipulate a whistleblower's eligibility and the amount of an award. Kohn asserted that this exclusion sends the wrong message and is counter to legislative intent because it gives money back to the

[4] *See* 7 U.S.C. 26(a)(3); 12 U.S.C. 5497(b)(d)(1).

[5] *See In re Hyundai Motor America, Inc. RQ17–004, NHTSA Recall No. 15V–568, NHTSA Recall No. 17V–226, Consent Order, Para. 21,* available at *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/rq17-004_hyundai_consent_order_executed_11272020.pdf* (consent order including performance obligations to invest in safety data analytics and development of a testing laboratory); *see also In Re Daimler Trucks North America LLC, AQ18–002 Consent Order, Para. 12(c),* available at *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/aq18-002_consent_order_executed.pdf* (consent order including performance obligations to invest in safety data analytics infrastructure).

wrongdoer and blocks a whistleblower from obtaining a larger award.

NHTSA does not find this suggestion persuasive. NHTSA does not view performance obligations as constituting a ''collected'' monetary sanction. Additionally, NHTSA disagrees that exclusion of money used to satisfy performance obligations is in any way a pretext for allowing NHTSA to block whistleblowers from receiving a larger award. Unlike ''collected'' monetary sanctions, money used to satisfy performance obligations may be an important component of a resolution, helping to ensure that a regulated entity sufficiently addresses ongoing and sustainable compliance with the Safety Act and NHTSA's safety regulations. If there is a collection of the performance obligation amounts in the form of a monetary payment to the United States government as a result of a violation of a consent order, NHTSA agrees that amount is then considered a ''collected'' monetary sanction. Likewise, in those cases where the agreement specifies that if the total performance amount is not spent and the company is liable for a payment to NHTSA for the balance of the unspent performance amount,[6] and the company pays such amount to NHTSA, that is considered a ''collected'' monetary sanction.

Similarly, ''deferred penalties'' or ''abeyance amounts'' agreed to be paid as a monetary penalty in the event that the company violates the consent order, the Safety Act, or the regulations thereunder are ''collected monetary sanctions'' if and when the deferred penalty or abeyance amount is actually paid to the United States government.

These views are consistent with the statutory requirement that: ''Any amount payable [to a whistleblower] . . . shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment.'' 49 U.S.C. 30172(b)(2). Penalties allocated to performance obligations and deferred penalties that have not been paid to the United States government are neither ''collected'' nor ''available for [ ] payment.''

ii. Contractor

The NPRM contained a proposed definition of ''contractor'' as an individual presently or formerly providing goods or services to a motor vehicle manufacturer, part supplier, or dealership pursuant to a contract.

[6] *See In re Kia Motors America, RQ17–003, NHTSA Recall 17V–224, Consent Order, Para. 26,* available at *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/rq17-003_kia_consent_order_executed_11272020.pdf.*

NHTSA continues to believe that the definition must include both present and former contractors to maximize the reach and effectiveness of the whistleblower program. For example, if a company terminates a contractor after the contractor reports safety issues, it would not serve the purpose of the Whistleblower Act to bar such a contractor from an award simply because the contractor no longer works for the company. Additionally, whether a contractor is currently or formerly employed has no bearing on whether the contractor has information that might assist NHTSA's vehicle safety work.

One commenter asked if the above definition of ''contractor'' includes independent contractors. The definition is inclusive of independent contractors and there is no restriction or minimum on how long they worked for or with the motor vehicle manufacturer, part supplier, or dealership.

iii. Covered Action and Related Administrative or Judicial Action

NHTSA's proposed definitions of ''covered action'' and ''related administrative or judicial action'' are based on the definition found in 49 U.S.C. 30172(a)(1). The proposed definition of ''covered action'' includes any administrative or judicial action, including any related administrative or judicial action brought by the Secretary, NHTSA, or the U.S. Attorney General (Attorney General) under 49 U.S.C. Chapter 301, or the regulations in Chapter 301 that in the aggregate results in monetary sanctions exceeding $1,000,000. Additionally, the proposed rule explains that the more than $1,000,000 threshold can be satisfied if the total amount of monetary sanctions paid by multiple defendants or parties and collected by the United States totals more than $1,000,000 from the covered action. The proposed definition of ''related administrative or judicial action'' includes ''an action that was brought under 49 U.S.C. Chapter 301 by the U.S. Department of Justice, the U.S. Department of Transportation, or the Agency, and is based on the original information provided by the whistleblower.''

NHTSA explained in the NPRM that since the statute specifies that an action is brought by the Secretary or Attorney General ''under this chapter,'' the statute is referring solely to 49 U.S.C. Chapter 301 and the regulatory obligations promulgated under 49 U.S.C. Chapter 301, as the Whistleblower Act was codified as part of 49 U.S.C. Chapter 301.

Some commenters supported NHTSA's proposed definition. Hyundai agreed that covered actions and related administrative and judicial actions should arise directly under Chapter 301 and the parenthetical phrase ''including any related administrative and judicial action'' does not encompass actions outside of Chapter 301.

Conversely, some commenters disagreed with this definition and proposed ''related administrative and judicial action'' to include *any* related administrative or judicial action, even those not under Chapter 301. Constantine Cannon asserted that interpreting ''related'' action to mean a subset of ''any administrative or judicial action'' makes the phrase superfluous and pointed to other areas of the statute that define related action to include actions taken outside of Chapter 301.

NHTSA disagrees that its reading of the statute renders the word ''related'' superfluous. An example of related actions under the Vehicle Safety Act might be a civil penalty action for a reporting violation of 49 U.S.C. 30166 and a criminal action with respect to the same reporting, pursuant to 49 U.S.C. 30170(a). Moreover, as stated in the NPRM, despite 49 U.S.C. 30172(c)(2)(A)'s mandate that no award shall be made to any whistleblower who is convicted of a criminal violation ''related to the covered action'' for which the whistleblower would otherwise receive an award, NHTSA does not believe the use of the word ''related'' in that context is relevant to the scope of a related action under 49 U.S.C. 30172(a)(1). The purpose of the criminal conviction provision in section 30172(c)(2)(A) is to ensure that a whistleblower cannot benefit from their own wrongdoing. That provision is not limited to a related action ''under this chapter'' and thus has a different (broader) scope based on the plain text of the statute.

The National Whistleblower Center proposed regulatory language that covered actions under the Whistleblower Act include federal enforcement actions outside of Chapter 301. The National Whistleblower Center also proposed a requirement that NHTSA work and coordinate with the U.S. Department of Labor, the U.S. Securities and Exchange Commission (SEC), the Internal Revenue Service, the U.S Commodity Futures Trading Commission (CFTC), the U.S. Environmental Protection Agency, the Federal Trade Commission, and/or the U.S. Department of Justice on any matters related to the Whistleblower Act that may also implicate the violation of laws enforced by these agencies. To

further support these proposals, a few commenters pointed to the SEC and CFTC's ability to include actions brought by other agencies under their definitions of ''covered action.'' NHTSA does not find these proposals persuasive.

Unlike the Whistleblower Act, the SEC and CFTC's governing statutes include a definition of ''related action.'' [7] Both of these definitions of ''related action'' specifically incorporate by reference actions brought by other specified, federal agencies. The Whistleblower Act does not contain a definition of related action or any reference to actions other than those brought under Chapter 301.[8] ''[R]elated action'' under 49 U.S.C. Chapter 301 is given effect by considering two actions under 49 U.S.C. Chapter 301. For example, if NHTSA pursues two separate enforcement actions for violations of 49 U.S.C. Chapter 301, or regulations thereunder, against two different companies (for example, a supplier and a vehicle manufacturer) based on the same facts provided by a whistleblower, in that case, the two separate actions would be related.[9]

NHTSA continues to believe that the plain language of the statute is clear and that NHTSA does not have discretion under the statute to consider actions taken under other statutes (such as separate criminal statutes) as part of a ''covered action,'' even if such actions involve vehicle safety issues and/or are based on facts common to an action taken under 49 U.S.C. Chapter 301.

Kohn outlined concerns that the Department of Justice has a historical preference for bringing actions under Title 18 and the exclusion of monetary sanctions from actions brought under Title 18 will dissuade whistleblowers from coming forward. Similarly, Cohen Milstein, along with other commenters, voiced concerns that a whistleblower would lose incentive to report if an award is dependent on how the government chooses to pursue a wrongdoer. Although NHTSA acknowledges these concerns, the plain language of the statute does not allow NHTSA to include every action under Title 18 or otherwise broaden the reach of the statute.

Additionally, a few commenters argued the specific fund from which NHTSA is obligated to pay a whistleblower should not constrict the definition of ''covered action.'' However, NHTSA does not believe that the existence of a particular fund is what is restricting the definition of ''covered action.'' Rather, NHTSA continues to believe that a whistleblower cannot be issued an award percentage of monies paid by a company for criminal violations of statutes other than the Safety Act. Such a reading would be inconsistent with the requirement of the statute that the action be brought ''under this chapter.'' For example, a criminal action for wire fraud under 18 U.S.C. 1343 is not an action under the Safety Act (49 U.S.C. Chapter 301). However, a criminal action brought under 49 U.S.C. 30170, the criminal penalties provision of the Safety Act, would constitute an action ''under this chapter.'' [10]

In sum, a covered action does not include any action brought by the U.S. Department of Justice under any statute other 49 U.S.C. Chapter 301.

iv. Dealership

NHTSA proposed to define ''dealership'' using a broader definition than the statutory definition of ''dealer'' found in 49 U.S.C. 30102(a)(2). Specifically, NHTSA proposed a ''dealership'' means a person selling and distributing motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale. The definition is not limited to a dealership selling new motor vehicles, as in the statutory definition of ''dealer.'' For example, an employee of a used car dealer could identify and bring to the Agency's attention a safety defect in a vehicle that has not been timely recalled.

Auto Innovators proposed that dealership should only include those with a franchise relationship to the manufacturer and whose products are being reported to NHTSA. Auto Innovators stated it does not believe dealerships without a franchise relationship will likely possess original information.

NHTSA disagrees. A dealership without a franchise relationship can obtain information gained from experiences, communications, and observations. For example, individuals who work at a dealership without a franchise relationship work with motor vehicles and motor vehicle equipment on daily basis and receive purchaser complaints and ready vehicles and vehicle parts for sale. Additionally, some of these dealerships specialize in a particular make and model of a car and would be able to detect issues with the motor vehicles or motor vehicle parts that are likely to cause a risk to motor vehicle safety. Therefore, NHTSA disagrees with Auto Innovators' proposal and believes a limited definition of dealership would not serve the purpose of the Whistleblower Act and would inhibit the reporting of potential safety defects that are likely to cause unreasonable risk of death or serious physical injury.

v. Employee

The proposed definition of ''employee'' defined ''employee'' as an individual presently or formerly employed by a motor vehicle manufacturer, part supplier, or dealership. The proposed definition included both present and former employees to maximize the reach and effectiveness of the whistleblower program. As noted above, it would not serve the purpose of the Whistleblower Act to bar a former employee from an award simply because he or she no longer works for the motor vehicle manufacturer, part supplier, or dealership.

The comments all favored the proposed definition of employee to include owners of a motor vehicle manufacturer, part supplier, or dealership. However, Auto Innovators proposed owners of these businesses should not be allowed to benefit if they are reporting their own misconduct or the misconduct of the business enterprise that they own. Constantine Cannon addressed Auto Innovators concern by pointing to proposed § 513.7, on whistleblower ineligibility, which bars whistleblowers who deliberately or substantially contribute to the alleged violation. NHTSA agrees with this view. Further, Auto Innovators

[7] *See* 7 U.S.C. 26(a)(5); 15 U.S.C. 78u–6(a)(5).

[8] Similarly, a few commenters also proposed that the barriers to NHTSA's acquisition of information from other agencies, such as information regarding whether whistleblower information was used to bring an administrative action, cannot restrict the definition of ''covered action.'' Again, commenters point to the SEC and CFTC's ability to obtain information from other agencies to support this assertion. NHTSA believes the plain language of its governing statute is determinative of the definition of ''covered action'' and, as described, unlike the Dodd-Frank Act, the Whistleblower Act does not mandate coordination with agencies other than DOJ, when necessary.

[9] NHTSA's first whistleblower award was given to a whistleblower who provided information that led to enforcement actions resulting in consent orders with two companies (Hyundai Motor America, Inc. and Kia Motors America, Inc.). *See https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-02/whistleblower-decision-letter-RQ17-003-Kia-RQ17-004-Hyundai_web.pdf.*

[10] Section 30170(a)(1) provides for criminal liability for falsifying or withholding information. It states: ''A person who violates section 1001 of title 18 with respect to the reporting requirements of section 30166, with the specific intention of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects that have caused death or serious bodily injury to an individual (as defined in section 1365(g)(3)[1] of title 18), shall be subject to criminal penalties of a fine under title 18, or imprisoned for not more than 15 years, or both.''

proposed a definition of owner that specifies whether the term owner includes anyone with an ownership interest in a business regardless of the size of their interest or the size of their share of a publicly traded company. NHTSA disagrees with a need to define ''owner.'' Rather, it is NHTSA's position that an owner in this context is generally someone who both owns at least part of a company and holds a permanent employment position or manages at least one employee (*e.g.,* an owner does not need to be involved in a company's day-to-day operations, but instead can have some sort of limited managerial relationship with the person who manages a company's day-to-day operations).

For example, as proposed by Kohn, owners of dealerships are in an excellent position to gather customer complaints that have a significant impact on public safety. Similarly, NHTSA believes partial owners of businesses who manage employees and oversee operations can learn about and witness safety defects within the supply chain that were not otherwise reported to NHTSA.

Constantine Cannon also proposed the definition of employee should include employees of an automaker's foreign parent company. NHTSA agrees but does not find a need to change the proposed definition to encompass these individuals. The definition of whistleblower under 49 U.S.C. 30172(a)(6) is not limited to those in the United States. The definition in 49 U.S.C. 30172(a)(6) specifies that a whistleblower is an individual who, among other requirements, is an ''employee or contractor of a motor vehicle manufacturer, part supplier, or dealership.'' The definitions of motor vehicle manufacturer, part supplier, and dealership found in 49 U.S.C. 30102 are also not restricted to only businesses based in the United States. Thousands of motor vehicles and motor vehicle parts are imported and used in the United States every year. Potential whistleblowers who are currently or formerly employed outside the United States might possess vital information related to potential safety defects which are likely to cause unreasonable risk of death or serious physical injury. For example, NHTSA relied upon information from and issued an award to a whistleblower working in South Korea who supplied NHTSA with information in connection to Hyundai Motor America, Inc. and Kia Motors America, Inc.'s violations of the Safety Act.[11] Therefore, it is imperative for NHTSA's safety mission to include those employed outside the United States within the scope of the definition of ''employee.'' NHTSA has not limited the definition of employee to individuals within the United States and does not find a change to be necessary.

Finally, individual commenters proposed including relatives of employees and contractors and specifying whether there is a minimum time requirement to be considered an employee. NHTSA does not believe that relatives of employees and contractors meet the definition of ''whistleblower'' found in 49 U.S.C. 30172(a)(6). Congress specifically and unambiguously defined a ''whistleblower'' as an employee or contractor and made no mention of those related to an employee or contractor. NHTSA also does not believe that there needs to be a minimum time requirement that an individual worked at a motor vehicle manufacturer, part supplier, or dealership for that individual to be considered an employee. Since no time limitation was specified in the definition, NHTSA finds a change to be unnecessary.

vi. Independent Knowledge or Analysis

NHTSA proposed a definition of ''independent knowledge or analysis'' because Section 30172(a)(3)(A) states that original information is information that ''is derived from *independent knowledge or analysis* of an individual'' (emphasis added). The proposed definition defines ''independent knowledge'' as factual information in the potential whistleblower's possession that is not generally known or available to the public and is not already known to NHTSA. Publicly available sources include both sources that are widely disseminated, such as corporate press releases and filings, and media reports, as well as sources that, while not widely disseminated, are generally available to the public, such as court filings and documents obtained through Freedom of Information Act requests.

The proposed definition does not require that a potential whistleblower have direct, first-hand knowledge of potential violations. The proposed definition states that the potential whistleblower may gain independent knowledge from the potential whistleblower's experiences, communications and observations in the potential whistleblower's business or social interactions.

MEMA disagreed with the proposed definition's inclusion of those without direct, first-hand knowledge of potential violations. MEMA proposed that those without first-hand knowledge would be unable to assess a potential safety violation resulting in the circumvention of internal processes and communications between part manufacturers and original equipment manufacturers (OEMs). NHTSA disagrees. Those without ''first-hand'' knowledge, such as an employee of a used-car dealership, may still have the requisite expertise to conduct their own personal analysis and identify a potential safety violation. They might get regular complaints about a particular issue or conduct repairs related to a particular issue on a regular basis. However, only those individuals who are employees or contactors of a motor vehicle manufacturer, part supplier, or dealership could be eligible for an award if they meet the other requirements of 49 U.S.C. 30172 and regulations thereunder.

The proposed definition of ''independent knowledge or analysis'' further provided that information will not be considered to have been derived from an individual's ''independent knowledge or analysis'' in some situations.

The first proposed exclusion was for information that was obtained solely through a communication that is subject to attorney-client privilege or the work product doctrine. When describing the proposed exclusion, the NPRM recognized that there are some exceptions to various privileges, such as Federal Rule of Civil Procedure 26(b)(3) (providing that materials prepared in anticipation of litigation may be discovered by an adverse party if the party shows ''substantial need'' and ''undue hardship''), and the crime-fraud exception to the attorney-client privilege.

Several commenters proposed that all information that would be admissible in an administrative, civil, or criminal proceeding should be considered information upon which a reward can be based. Kohn supported this by stating NHTSA's proposed exclusion will encourage corporations to abuse attorney-client privilege. Auto Innovators proposed that NHTSA should establish a process to isolate information while a privileged information determination is made. The National Whistleblower Center

[11] *See* Yang, Heekyong, *Hyundai Motor whistleblower, $24 mln in hand, plans to help others speak up,* Reuters, Nov. 14, 2021, *https://www.reuters.com/business/autos-transportation/hyundai-motor-whistleblower-24-mln-hand-plans-help-others-speak-up-2021-11-12/; see also* NHTSA Makes Its First Ever Whistleblower Award, Nov. 9, 2021, *https://www.nhtsa.gov/press-releases/first-whistleblower-award.*

proposed a definition excluding information subject to attorney-client or work-product privilege unless it would otherwise be permitted by applicable state attorney conduct rules or rules approved by the Secretary. Similarly, Constantine Cannon proposed that NHTSA use the same definition used by the SEC and CFTC, which includes exclusions for communications subject to attorney-client privilege or in connection with the legal representation that a putative whistleblower has been providing to an employer or firm, unless disclosure is authorized by the applicable federal or state attorney conduct rules.

NHTSA has determined that, pursuant to the District of Columbia Rules of Professional Conduct, attorneys in its Office of the Chief Counsel may not review materials protected by attorney-client privilege. This determination is based on our understanding of the District of Columbia Bar's Ethics Opinion 318: Disclosure of Privileged Material by Third Party.[12] The exclusion is not intended to preclude an individual who has independent knowledge or analysis of potential Safety Act violations from becoming a whistleblower if that person chooses to consult with an attorney or is an attorney. Rather, this exclusion prohibits an employee or contractor from revealing attorney-client privileged or work product information that they learned of solely through a privileged communication. Thus, NHTSA believes the proposed definition remains appropriate and is adopting it in this final rule.

The second proposed exclusion is for information that was obtained in a means or manner that is determined by a United States federal court or state court to violate applicable federal or state criminal law.

Some commenters disagreed with excluding information if the information was obtained in a means or manner found to be illegal by a state court. The National Whistleblower Center proposed language that limits excluded information to information obtained by means or in a manner determined by a United States federal court to violate federal or state criminal law. Kohn proposed removing the exclusion of information obtained in violation of state law because of the possibility of preemption and the differences between state and federal law.

NHTSA disagrees with this proposal. NHTSA believes information obtained in violation of state law should be excluded. NHTSA does not want to encourage employees to obtain information for NHTSA by any means or manner. For example, theft is generally a charge brought under state law rather than federal law. NHTSA does not want to encourage potential whistleblowers to illegally obtain information. In these cases, preemption would generally not be at issue.

In the NPRM, NHTSA urged potential whistleblowers to use caution when providing NHTSA with information covered by a legally binding order or a confidentiality agreement. NHTSA's NPRM recommended that those potential whistleblowers consult with private counsel before submitting such information to NHTSA.

Kohn disagreed with the Agency's proposed suggestion for potential whistleblowers under binding nondisclosure agreements to consult private counsel before providing NHTSA with information. Kohn proposed this suggestion will make whistleblowers think that they are forced to hire private counsel. Similarly, Kohn proposed that the regulations should prohibit private contracts, employment agreements or settlement agreements from interfering with a whistleblower's disclosure to NHTSA. NHTSA disagrees with Kohn on these issues.

NHTSA is obligated to adhere to and support a whistleblower's statutory protections, but NHTSA's attorneys do not represent whistleblowers. Whistleblowers should be aware that ''[t]o the extent protective orders, settlement agreements, or other confidentiality provisions prohibit motor vehicle safety-related information from being transmitted to NHTSA, such limitations are contrary to established principles of public policy and law, including Rule 26 of the Federal Rules of Civil Procedure and its state corollaries which require a showing of good cause to impose confidentiality.'' [13] However, NHTSA cannot advise a whistleblower that the agreement they are bound by lacks good cause to impose confidentiality. Therefore, if a whistleblower needs legal advice, they should obtain their own private legal counsel. NHTSA continues to suggest that potential whistleblowers who are aware of material protected by a protective order should not provide the documents subject to the order to NHTSA; whistleblowers should inform NHTSA about the existence of such documents without revealing the substance of the material under the protective order.

The NPRM also asked if commenters had suggestions for additional exclusions, including those similar to the exclusions under ''independent knowledge'' or ''independent analysis'' within the SEC and CFTC whistleblower programs. One example of a potential exclusion mentioned in the NPRM was excluding information obtained solely because the potential whistleblower is an officer, director, trustee or partner of an entity or a person whose principal duties involve compliance or internal audit responsibilities. The National Whistleblower Center (NWC) proposed that an officer, director, trustee, partner of an entity, or auditor of or within an entity who learns about information from another individual within the entity should generally be excluded from the rule because they lack original information from independent knowledge. Specifically, the NWC proposed that these individuals should be excluded from the rule if they learned about the subject information via an entity's normal processes for identifying, reporting, and addressing potential violations. Additionally, the NWC proposed that individuals whose duties include audits and internal investigations into possible violations also be excluded from the rule.

Conversely, Kohn agreed with NHTSA's proposal to not exclude a potential whistleblower solely because the potential whistleblower was or is an officer, director, trustee or partner. Additionally, Kohn supported NHTSA's proposal to include those participating in or observing internal audit processes. Kohn reasoned that auditors can be pressured to water down reports and this allowance would deter companies from enforcing this pressure. After consideration of the comments, NHTSA has decided it should not exclude officers, directors, trustees or partners. NHTSA believes officers, directors, trustees, partners, and persons whose principal duties involve compliance or internal audit responsibilities all have the potential to learn important information concerning vehicle safety. Furthermore, NHTSA disagrees with the NWC's proposed exclusion because NHTSA believes such individuals may have information that is not generally known or available to the public and is not already known to NHTSA. Excluding such individuals could prevent such valuable safety information from reaching the Agency. Consequently, NHTSA will not exclude such individuals.

[12] D.C. Bar, Formal Op. 318 (2002) (discussing ethical obligations when privileged material may have been taken without authority).

[13] *NHTSA Enforcement Guidance Bulletin 2015–01: Recommended Best Practices for Protective Orders and Settlement Agreements in Civil Litigation,* 81 FR 13026 (Mar. 11, 2016).

However, as discussed above, any illegal action by these persons to obtain the information excludes them from receiving a whistleblower award.

vii. Original Information

Proposed § 513.2(b) defined ''original information'' as information that is derived from the independent knowledge or analysis of an individual, is not known to the Secretary or Agency from any other source, unless the individual is the original source of the information; and is not exclusively derived from an allegation made in a judicial or an administrative action, in a governmental report, a hearing, an audit, or an investigation, or from the news media, unless the individual is a source of the information. Proposed § 513.2(b) required that original information be provided to the Agency for the first time after December 4, 2015.

Thomas Kowalick commented, disagreeing with the Agency's proposed prohibition on information provided to the Agency prior to December 4, 2015. However, December 4, 2015 is the date on which Congress enacted the FAST Act. Consequently, this limitation in 513.2(b) is based on the rule of construction contained in Section 24352(b) of the FAST Act. Other commenters supported NHTSA's proposed limitation.[14]

The Agency also is making minor edits to the definition of ''original information that leads to a successful resolution'' for clarity.

viii. Potential Whistleblower

To differentiate from the statutory definition of ''whistleblower'' that contains a number of prerequisites that need to be met to fall under the definition, NHTSA proposed the term ''potential whistleblower'' for the sake of clarity. The proposed definition of potential whistleblower refers to an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership submitting information to the Agency in accordance with and pursuant to Part 513. Potential whistleblowers will be treated as receiving the whistleblower protections set forth in 49 U.S.C. 30172(f).

Commenters agreed with NHTSA's proposal to treat potential whistleblowers as subject to the protections in 49 U.S.C. 30172(f). Kohn disagreed with limiting a potential whistleblower to an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership. Kohn proposed that anyone who submits information to NHTSA should be considered a potential whistleblower and NHTSA's determination with respect to whether or not a potential whistleblower is eligible should be a separate analysis. NHTSA disagrees with this proposal. NHTSA will not be able to determine whether a person is a ''whistleblower'' until, at the very least, that person submits information to the Agency and it is evaluated. 49 U.S.C. 30172 limits whistleblower protections to ''any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership.'' NHTSA does not have the authority to broaden that definition and does not want to encourage people who do not qualify to submit information to NHTSA's whistleblower program. For example, a significant quantity of information that NHTSA receives on vehicle safety issues comes from ordinary vehicle owners and that information is not appropriate for handling under the whistleblower program. NHTSA cannot reasonably consider anyone who submits information to the agency to be a whistleblower, and doing so would divert resources from and adversely impact legitimate whistleblowers. The definition of potential whistleblower as requiring someone to meet the basic requirement of being an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, in accordance with the statutory definition, appropriately protects those individuals for whom the statutory protections were designed.

ix. Whistleblower

Proposed § 513.2(b) defined ''whistleblower'' as any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who voluntarily provides to the Agency original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement set forth in 49 U.S.C. Chapter 301 or regulations thereunder, which is likely to cause unreasonable risk of death or serious physical injury.[15]

Commenters generally supported NHTSA's proposed definition of whistleblower. Auto Innovators proposed that the regulatory definition should not include entities not covered by the statutory definition of whistleblower such as advocacy groups, media reporters, industry trade associations, or third parties. NHTSA has concluded that the proposed scope was appropriate and consistent with the statute. While NHTSA requested comment on whether employees of trade groups should be included in the definition, after consideration of the comments, NHTSA believes that such an expansion would not be consistent with the statutory definition. However, as NHTSA explained in the NPRM, employees and contractors working for companies within a trade group's membership are eligible to be whistleblowers, provided that they fall into the definition of motor vehicle manufacturer, part supplier, or dealership.

Thomas Kowalick proposed that the definition should only include individuals and not entities. NHTSA agrees. The proposed definition and statutory definition uses the word ''employee,'' which denotes a single person, and based on this context it would likewise be anomalous to interpret ''contractor'' to encompass multi-person entities. Therefore, NHTSA does not believe this comment warrants a change.

In the NPRM, NHTSA specifically requested comment on whether a whistleblower must provide original information related to the company that employed or contracted with the whistleblower or whether the employee or contractor of any motor vehicle manufacturer, part supplier, or dealership can report original information regarding any motor vehicle manufacturer, part supplier or dealership (not just the one that employed them or that they were contractors of). Kohn supported NHTSA's proposal that competitors, partners, employees of another separate corporate entity should be entitled to an award under the plain meaning of the statute. NHTSA received no other comments in response to this question.

C. Procedures for Submitting Original Information (§ 513.4)

NHTSA proposed requiring potential whistleblowers to submit information on a standardized form—the proposed WB–INFO form. Proposed § 513.4(a) stated that the standard form must be submitted either by email to NHTSA's established account (*NHTSAWhistleblower@dot.gov*), which is monitored by NHTSA's Office of the Chief Counsel, or by any such method that the Agency may expressly designate

[14] Kohn, again, noted their disagreement with the Agency's proposed definition of independent knowledge. *See* NHTSA's analysis of this comment under the discussion of ''Independent Knowledge or Analysis.''

[15] This definition of whistleblower follows the definition found in 49 U.S.C. 30172(a)(6) except that the proposed rule uses the term ''Agency'' and clarifies that ''any violation or alleged violation of any notification or reporting requirements of this chapter'' refers to 49 U.S.C. Chapter 301 and regulations promulgated thereunder for clarity.

on its website. On the WB–INFO form, a potential whistleblower must declare, under penalty of perjury, at the time the potential whistleblower submits information on the WB–INFO form that the information is true and correct to the best of the potential whistleblower's knowledge and belief.[16]

Proposed § 513.4(c) provided that a potential whistleblower may submit original information to the Agency anonymously through use of a legal representative. The legal representative must submit the information on behalf of the potential whistleblower pursuant to the procedures specified in 513.4(a).

Kohn commented in support of NHTSA's proposed procedures but objected to requiring that the timing of the submission of a WB–INFO form be determinative of qualification for an award. However, NHTSA's proposed regulations do not specify when the WB–INFO form must be submitted to NHTSA.[17] Therefore, NHTSA agrees with Kohn and will not require the timing of the WB–INFO form to be determinative of qualification for an award, subject to other provisions of the statute and regulations. For example, if a whistleblower initially reaches out to NHTSA without submitting a form (because the person is unaware of the Agency's regulation), the whistleblower can still be eligible for an award if they subsequently submit the WB–INFO form to NHTSA.

In the NPRM, NHTSA proposed that a whistleblower or the whistleblower's legal representative must be the one to directly provide the information to NHTSA. This proposal was based on the statutory requirement that a whistleblower voluntarily provide information to the Secretary. NHTSA also requested comments on whether it should allow non-attorneys to submit information on behalf of a potential whistleblower. Kohn disagreed with requiring the whistleblower or their legal representative to make the submission. Kohn proposed that the statutory definition of original information implies that third parties who learned the information from a whistleblower can report the information to NHTSA, and those whistleblowers should be eligible for an award. Kohn proposed that NHTSA allow whistleblowers to submit information through third parties such as ''news media, referrals from Congress or other investigatory agencies, civil society organizations, [or] international anti-corruption or law enforcement authorities.'' Further, Kohn proposed that whistleblowers in countries outside the United States, especially in countries with no whistleblower protections, should not be ineligible for a whistleblower award because they used a third party, such as an advocacy group, to relay the information to NHTSA. NHTSA agrees with Kohn with respect to a whistleblower not being disqualified if the whistleblower is initially represented by an advocacy group. Rather, as long as it is clear that an advocacy group is making a submission on behalf of an individual, a whistleblower's eligibility will not be affected. However, to be eligible for an award, NHTSA believes it is important that a whistleblower subsequently contact NHTSA directly about the subject information (in other words, the whistleblower must submit the WB–INFO form). That will help ensure that the Agency can follow up on issues and has the direct, unfiltered perspective of that person.

Similarly, Kohn commented that NHTSA should not require that a whistleblower submit a WB–INFO form to be eligible for a whistleblower award. Kohn pointed to news sources and congressional testimony regarding whistleblowers who shared original information with news media and non-governmental safety organizations rather than directly to NHTSA. Kohn argued that NHTSA will likely continue to obtain useful, original information from these third-party sources where a whistleblower did not go through NHTSA's formal procedures. To support this proposal, Kohn pointed to a whistleblower in the Takata case's interaction with the press alongside that individual's reports to the Department of Justice and the Federal Bureau of Investigation (FBI).

NHTSA disagrees with this proposal. 49 U.S.C. 30172(a)(6) defines a ''whistleblower'' as someone who ''voluntarily *provides to the Secretary* original information.'' (emphasis added). Congress mandated that a whistleblower provide the information to NHTSA to receive a whistleblower award. Further, if a whistleblower provides information to a news source, there is no guarantee that NHTSA will be able to obtain that person's contact information. This is especially true if the source is anonymous. Nothing in this rule prevents a whistleblower from going to the press, the Department of Justice, the FBI, or other authorities in conjunction with a report to NHTSA. If a potential whistleblower goes to one of these other entities first, NHTSA hopes that the other entity would direct the whistleblower to submit information directly to NHTSA. If NHTSA receives a potential whistleblower's contact information from another government agency, news organization, law enforcement authorities, advocacy organizations, or a similar third-party, NHTSA intends to attempt to contact the potential whistleblower and provide them information about how to submit a WB–INFO form.

D. Confidentiality (§ 513.5)

Consistent with the protections for whistleblowers in 49 U.S.C. 30172(f), NHTSA's proposed § 513.5(a) explained that notwithstanding 49 U.S.C. 30167, the Secretary and any officer or employee of the U.S. Department of Transportation shall not disclose any information, including information provided by a whistleblower to the Secretary, that could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of 5 U.S.C. 552a, with certain exceptions as provided by statute.

In the NPRM, NHTSA stated it is the Agency's view that if an individual is not a whistleblower, as defined by the statute, the Agency is not bound by the limitations contained in 49 U.S.C. 30172(f). However, it is the Agency's intent to generally afford potential whistleblowers confidential protections, unless otherwise waived or permitted or required by law. NHTSA recognizes that potential whistleblowers often put themselves at risk of significant consequences, and thus maintaining their confidentiality is of the utmost importance.

In the NPRM, NHTSA proposed that an individual discloses information relating to a motor vehicle defect, noncompliance, or violation of notification or reporting requirement that is not likely to cause unreasonable risk of death or serious physical injury, then that person is not a whistleblower and is not entitled to the statutory protection contained in 49 U.S.C. 30172.[18]

[16] As stated in the NPRM, the purpose of requiring a sworn declaration on the WB–INFO form is to help deter the submission of false and misleading information and mitigate the potential harm to companies and individuals that may be caused by false or spurious allegations of wrongdoing.

[17] Kohn proposed that NHTSA take into consideration the case *Whistleblower 21276–13W* v. *Commissioner,* where the United States Tax Court held IRS regulations do not require Form 211 to be filed prior to providing information to the IRS to qualify for an award under 26 U.S.C. 7623. 144 T.C. 290 (2015), United States Tax Court, Docket Nos. 21276–13W, 21277–13W (June 2, 2015). However, NHTSA's final rule does not require that a potential whistleblower submit a WB–INFO form to NHTSA prior providing NHTSA any information.

[18] This includes a reporting individual who is an employee or contractor of a motor vehicle manufacturer.

Commenters disagreed with NHTSA's proposal to not afford the protections of 49 U.S.C. 30172(f) to whistleblowers whose information relates to a motor vehicle defect, noncompliance, or violation of notification or reporting requirement that is not likely to cause unreasonable risk of death or injury. Commenters argue this exclusion is too subjective and will prevent potential whistleblowers from coming forward with information. Commenters argue potential whistleblowers will fear losing protections following an agency determination that submitted information is not likely to cause unreasonable risk of death or injury. Kohn claims this policy is also counter to the Whistleblower Act and will result in whistleblowers choosing not to report information to NHTSA for fear of exposure.

NHTSA disagrees with these commenters. Under 49 U.S.C. 30172(a)(6), Congress defined a whistleblower, in section 30172, among other specifications, as someone who submits original information ''relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter, *which is likely to cause unreasonable risk of death or serious physical injury*'' (emphasis added). Further, under 49 U.S.C. 30172(f), Congress limited confidentiality protections to persons who meet the definition of whistleblower. Therefore, NHTSA is only authorized to afford those legal protections to those who submit information ''relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter, *which is likely to cause unreasonable risk of death or serious physical injury.*'' *See* 49 U.S.C. 30172(a)(6) (emphasis added).

As discussed in the NPRM, unlike other entities that have a policy and practice to treat all information obtained during an investigation as confidential and nonpublic,[19] NHTSA generally makes information on safety-related defect investigations for which it has not received a request for confidential treatment under 49 CFR part 512 publicly available. The Agency posts materials such as Information Requests, Special Orders, and answers thereto on its website, *www.nhtsa.gov*. Further, NHTSA also makes publicly available various consumer complaints that it receives through a variety of sources, including calls to its vehicle safety hotline, which are transcribed, and submissions of Vehicle Owner Questionnaires (VOQs) through its website.[20] Further, if an employee is worried about sharing information with NHTSA for fear of retaliation, 49 U.S.C. 30171 put in place protections for employees of motor vehicle manufacturers, part suppliers, and dealerships to protect the employees from discrimination or discharge for, among other things, providing to the employer or the Secretary information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301. The language in 49 U.S.C. 30171 does not restrict these protections only to those submitting information of a violation ''*which is likely to cause unreasonable risk of death or serious physical injury.*'' [21] Finally, § 513.6(b) gives the agency the ability to waive this requirement for good cause shown. NHTSA will therefore consider these issues on a case-by-case basis.

Commenters either supported or did not comment on the remainder of the proposed provisions related to confidentiality.

E. Prerequisites to the Consideration of an Award (§ 513.6)

Proposed § 513.6 summarized the general prerequisites for persons to be considered for the payment of an award, based on the statutory language of 49 U.S.C. 30172(b)(1) and the definition of a whistleblower under 49 U.S.C. 30172(a)(6), but added the word ''potential'' in front of the terms ''motor vehicle defect'' and ''noncompliance.'' Under proposed § 513.6(a), subject to the eligibility requirements in these rules, NHTSA may, but is not required to, authorize payment of an award to one or more persons who provide a voluntary submission to the Agency that contains original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301 or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, and the original information in that submission leads to the successful resolution of a covered action. In the NPRM, NHTSA asked for proposals of any other prerequisites for an award.

Kohn commented on Hyundai's proposed definition of ''voluntary'' submitted to NHTSA prior to the publication of the NPRM. Specifically, Kohn agreed a person should not be considered voluntarily providing information if that person previously received a subpoena or a demand that relates to the same subject matter. However, Kohn proposed exceptions to the exclusion including ''friendly'' subpoenas, subpoenas after the whistleblower's information ''is published in the news media, presented to Congress or another federal or state agency, provided to the victims of an auto accident, set forth in testimony in any proceeding, or otherwise voluntarily presented prior to obtaining a subpoena,'' and subpoenas after voluntarily providing ''information to an organizations compliance program, legal organization and/or supervisory personnel within the company.'' The National Whistleblower Center also proposed language that defines a voluntary submission as information provided before a request, inquiry, or demand that relates to the inquiry is directed at the potential whistleblower or anyone representing the potential whistleblower.

NHTSA believes that whether information submitted after the potential whistleblower receives a subpoena or a demand related to the subject matter is ''voluntarily provide[d]'' to NHTSA depends on the particular circumstances. Like the SEC, NHTSA believes a whistleblower award should not be made available to an individual who makes a whistleblower submission after being asked to provide information on a matter during the course of an investigation or inquiry by that agency.[22] Similar to the SEC, NHTSA believes ''[o]nly a request that is directed to the individual involved (or the individual's representative) will preclude that individual from subsequently making a 'voluntary' submission of the requested information or closely related information.'' [23] If an individual is part of a group or division within a company that receives a request, they are not precluded from

[19] The SEC and CFTC both have this practice. *See, e.g., Final Rule, Securities Whistleblower Incentives and Protections,* 76 FR 34300, 34332 (June 13, 2011); *Final Rule, Whistleblower Incentives and Protection,* 76 FR 53172, 53184 (Aug. 25, 2011).

[20] NHTSA redacts Personally Identifiable Information (PII) from publicly available documents.

[21] Employees may file a complaint with the Secretary of Labor alleging such discharge or discrimination. The Secretary of Labor is required to notify in writing the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person. 49 U.S.C. 30171(b).

[22] *See* Securities Whistleblower Incentives and Protections, 76 FR 34307 (June 13, 2011).

[23] *See* Proposed Rules for Implementing the Whistleblower Provisions of Section 21 F of the Securities Exchange Act of 1934, 75 FR 70490 (Nov. 17, 2010).

making a whistleblower submission so long as the information they are providing to NHTSA meets the definition of ''original information.'' The prohibition on those who receive direct, individual requests for information is restricted to requests from NHTSA. NHTSA considers a potential whistleblower who gave information to another government agency, by compulsion or voluntarily, as generally not relevant to whether that individual voluntarily shared information with NHTSA.[24]

Additionally, Kohn proposed a mandatory payment of an award if all the proposed requirements are met. NHTSA disagrees and believes there may be instances when a person who meets the requirements of § 513.6 is disqualified from an award or otherwise should not receive an award. *See* 49 U.S.C. 30172(c)(1)(A), (2).[25] Related issues are further discussed with respect to the provisions on award determinations in § 513.10.

F. Whistleblowers Ineligible for an Award (§ 513.7)

The NPRM recited the categories of individuals who are ineligible for an award. Proposed § 513.7 was based on statutory construction as well as the statutory provisions contained in 49 U.S.C. 30172(c)(2) and (g).

Of the categories of individuals who are ineligible for an award proposed by the NPRM, commenters only discussed whistleblowers who are convicted of a criminal violation related to the covered action and those who failed to internally report a violation through a company's internal reporting mechanism. Commenters disagreed about the scope of criminal violations included in proposed § 513.7(a). Additionally, commenters disagreed about whether a potential whistleblower should be required to use a company's internal reporting mechanisms before reporting information to NHTSA to be eligible for an award.

Proposed § 513.7 stated a whistleblower is ineligible for an award if the whistleblower is ''convicted of a criminal violation related to the covered action for which the whistleblower otherwise could receive an award.'' In the NPRM, NHTSA asked for comment regarding whether it should limit the criminal conviction bar to only those cases decided by a U.S. federal or state court or whether it should consider convictions issued by courts in other countries. Commenters disagreed about whether to include convictions issued by courts or tribunals in other countries.

Hyundai proposed a broadening of the definition of criminal violations in the proposed rule. Hyundai's proposal includes disqualifying those convicted in foreign tribunals and those who obtained information by a means or manner that is determined by a foreign court to be in violation of laws in the appropriate jurisdiction. Conversely, Constantine Cannon and Kohn propose the exclusion be limited to cases decided by U.S. federal or state courts. Both commenters point to NHTSA's unfamiliarity with foreign laws and the markedly different procedures and rights afforded to those in foreign countries. After considering these comments NHTSA believes the exclusion should be limited to those criminal violations decided by a U.S. federal or state court and will add clarifying language to the final rule.[26] Congress did not expressly state the scope of the exclusion. Therefore, the most logical reading of the statute is that it is referring to the United States. Moreover, expanding the exclusion to those criminal convictions decided by tribunals outside of the United States would potentially discourage whistleblowers by creating legal uncertainty.

Additionally, Constantine Cannon proposed the removal of the requirement for a whistleblower to disclose on proposed WB–AWARD form information about whether the potential whistleblower is currently the subject or target of a criminal investigation connected to the information at issue. Constantine Cannon asserted that this requirement departs from congressional intent to only bar individuals who are convicted of criminal violations rather than those investigated. Constantine Cannon adds that a whistleblower may be unaware if there is an investigation and be unable to provide that information. NHTSA disagrees. As stated in the NPRM, NHTSA understands some potential whistleblowers might not know if they are under investigation. However, NHTSA continues to believe this information, to the extent known, would benefit the agency. Filling in that portion of the WB–AWARD form does not automatically disqualify a potential whistleblower from receiving an award. NHTSA generally anticipates waiting until those disclosed, applicable investigations are closed before issuing a decision on an award. If a potential whistleblower discloses an investigation or some other piece of information that is not related to a criminal investigation connected to the information at issue, NHTSA will determine on a case-by-case basis whether that information disqualifies a potential whistleblower from being eligible for an award.

Finally, Hyundai requested to expand the exclusion of information obtained by unlawful means to include civil unlawful conduct to account for prosecutorial discretion. NHTSA disagrees. In 49 U.S.C. 30172(c)(2), Congress explicitly directs NHTSA to make no award to whistleblowers who are ''convicted of a criminal violation related to the covered action for which the whistleblower otherwise could receive an award.'' In light of the plain text reference to a criminal conviction, the provision as proposed is appropriate and would avoid incentivizing companies from suing potential whistleblowers.

Commenters were also split on whether a whistleblower should be required to use a motor vehicle manufacturer, parts supplier, or dealership's internal reporting mechanism. Commenters also proposed different assurances that a motor vehicle manufacturer, parts supplier, or dealership's internal reporting mechanism contains protections against retaliation and the adequacy of those protections.

Kohn commented that written protections from retaliation for internal reporting are not enough. Rather, Kohn proposed a requirement for confidential internal reporting mechanisms that prohibit corporate attorneys from learning the identity of a whistleblower—to guarantee complete confidentiality of a whistleblower. Additionally, Kohn argues a whistleblower who works with the government for many years on a successful enforcement action should not be barred from an award because they did not abide by internal reporting requirements.

NHTSA believes that these comments are largely outside the scope of this rulemaking. 49 U.S.C. 30172(c)(2)(E) does not address requirements for internal reporting mechanisms. Rather, it describes the circumstances when a whistleblower can use reporting mechanisms that are in place. NHTSA's

[24] This includes those who receive a subpoena from the Department of Justice. NHTSA notes that the receipt of a subpoena is indicative that a person may have relevant information, and not whether that person is a target of an investigation or otherwise suspected of wrongdoing. Other provisions of this final rule adequately inhibit wrongdoers from receiving a whistleblower award.

[25] Other comments related to § 513.6 are addressed in the discussion of the definition of original information.

[26] In 49 U.S.C. 30172(c)(2), Congress used very similar language as in 7 U.S.C. 26(c)(2). The CFTC interpreted this language to mean only criminal violations determined by a United States court. *See* Whistleblower Incentives and Protection, 76 FR 53172 (Aug. 25, 2011).

rule is consistent with the statute and NHTSA reiterates that the statute and associated regulatory provision allow for circumstances when internal reporting is not required, including for good cause shown. NHTSA believes these provisions strike the appropriate balance that the statute intended by incentivizing the use of internal reporting mechanisms in appropriate circumstances.

MEMA and Hyundai both proposed that internal reporting should always be required for a potential whistleblower to be eligible for an award. MEMA proposed a broader internal reporting requirement that would require whistleblowers to report the information to the manufacturer prior to providing the information to NHTSA. MEMA explained that this requirement would give manufacturers the opportunity to rectify an issue without having to burden NHTSA. Hyundai proposed a similar broadening of the reporting requirement and proposed a waiting period requiring a whistleblower to give a manufacturer a discrete amount of time to report an issue to NHTSA before the whistleblower can contact NHTSA. Hyundai argued that this waiting period will give a manufacturer the opportunity to assess if a safety issue exists and, if appropriate, issue a recall. This waiting period, Hyundai comments, would prevent a whistleblower from internally reporting an issue and reporting it to NHTSA in quick succession. If a company does not have a formal requirement, Ford proposed the burden should be on the whistleblower to show NHTSA in writing a reasonable attempt was made to bring the information to persons in the company.

Conversely, the National Whistleblower Center proposed language that further restricts the internal reporting requirement, excluding the internal reporting requirement if no such mechanism exists or, like in the proposed regulation, the whistleblower reasonably believes an internal report would result in retaliation.

NHTSA disagrees with expanding the internal reporting requirement. The proposed requirement in the NPRM comes from the statutory language used in 49 U.S.C. 30172(c)(2)(E). That statutory language requires potential whistleblowers to use internal reporting requirements only when they are in place and have mechanisms to protect employees from retaliation. Therefore, NHTSA disagrees with proposals expanding this internal reporting requirement outside the statutory language and requiring internal reporting when no mechanism is in place. Congress carved out an exception to this requirement for potential whistleblowers who have a reasonable belief that an internal report would lead to retaliation. Therefore, it would be contrary to this exception to always require internal reporting even when no mechanism is in place to protect whistleblowers from retaliation.

Additionally, NHTSA disagrees with Hyundai's proposed, discrete waiting period for manufacturers to report an issue to NHTSA before a potential whistleblower may contact the Agency. The fact that NHTSA is also aware of a potential safety issue does not impact a manufacturer's ability to expeditiously address it.

Further, Kohn, Ford, and the National Whistleblower Center proposed more specifically defining an internal report. Kohn proposed that NHTSA include more specifications on what an internal report must include. For example, Kohn proposed that NHTSA clarify whether the information internally reported must match what is reported to NHTSA. Ford proposed a requirement that internal reporting must be in writing so that the whistleblower can provide documentation of internal reporting to NHTSA. The National Whistleblower Center proposed a specific definition for ''internal reporting mechanism'' that includes a program widely publicized to employees that is independent of any legal department of the employer that can provide investigatory procedures, burdens of proof, and relief consistent with the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, 49 U.S.C. 30171. Additionally, Ford proposed that NHTSA should clarify how it will consider whether an internal reporting mechanism has protections against retaliation.

NHTSA believes that these issues are best suited to case-by-case evaluations and declines to further define these issues in the final rule. NHTSA agrees that the issue internally reported must generally match what is reported to NHTSA. It is likely that the information reported will not be identical, however, since additional context may be needed to explain the issue to the Agency. Additionally, the potential whistleblower may have additional information to report to the Agency based on how the internal report was handled. Whether or not a whistleblower has a reasonable belief that retaliation could occur or that the issue was already known to the company will likewise be handled on a case-by-case basis, given the fact-specific nature of those issues. Additionally, NHTSA disagrees that a specific format for an internal report should be required. Although written documentation would be helpful for evaluating whether or not a potential whistleblower complied with internal reporting requirements, NHTSA does not believe such a requirement is necessary. For example, NHTSA is aware that some companies provide a telephone hotline for reporting potential safety issues. Use of such a provided mechanism would generally be sufficient to constitute an internal report.

In addition, Kohn proposed that NHTSA adopt a number of blanket exemptions to the internal reporting requirement including: (1) if the whistleblower is not an employee of the entity at issue; (2) if the entity does not have an internal reporting program that guarantees confidentiality, is not independent from line-management, is not managed by an arm of the Office of General Counsel, and has independent authority to report to the company's Chief Executive Office, Board of Directors, or Audit Committee; and (3) if the whistleblower is located in a country that lacks legal protections for internal whistleblowers at least as effective as 49 U.S.C. 30171 and 29 CFR 1988. Further, Kohn proposed that NHTSA create requirements that lawyer-managed compliance programs be managed in an ethical manner.

Similarly, the National Whistleblower Center proposed a subjective test to determine if a whistleblower has a reasonable belief of retaliation. Additionally, the National Whistleblower Center proposed language that exempts the internal reporting requirement when: (1) the employer has been found to have obstructed justice within the last five years prior to the whistleblower report; (2) the whistleblower reasonably believes the information was already internally reported or subject of an internal investigation, or was otherwise already known to the employer, or constitutes an immediate threat to public safety, or the violation was willfully committed; and (3) if the disclosure of the whistleblower is covered under the obstruction of justice laws, including 18 U.S.C. 1513(e), or if the whistleblower first provides the information to any law enforcement officer as a result of voluntary testimony in a grand jury or federal court proceeding concerning a potential criminal violation of an auto safety law.

After consideration of these comments, NHTSA again believes these issues are best suited for case-by-case evaluation. While these types of considerations may support a potential

whistleblower's reasonable belief that an internal report would have resulted in retaliation, was not necessary because it was already reported or known to the company, or otherwise constitute good cause for not requiring an internal report, NHTSA believes the proposed regulatory language appropriately balances providing guidance on these considerations with flexibility to consider the unique circumstances of each matter. Every situation is different and NHTSA does not want to discourage potential whistleblowers from reporting if their particular situation does not neatly fit into one of the proposed blanket exceptions, or to incentivize companies to take a ''check the box'' approach to designing an appropriate internal reporting mechanism and safeguards against retaliation.

Ford proposed creating a presumption that an internal reporting mechanism protecting a whistleblower's confidentiality protects whistleblowers against retaliation. Additionally, Ford proposed clarification that a whistleblower's submitted information based on independent analysis should be subject to the internal reporting requirement. NHTSA declines to adopt these changes. Protecting confidentiality does not necessarily mean that a company is protecting a potential whistleblower from retaliation. For example, a potential whistleblower might be assured their name will not be reported, but the information they provide might indicate who reported that information. In that situation, assurance of confidentiality does not ensure that individual will not be retaliated against. Moreover, a potential whistleblower should not have to keep their identity confidential to be protected from retaliation and the ability of employees to openly speak up about potential safety issues advances vehicle safety.

NHTSA also believes the proposed regulation adequately addresses all types of information, including independent analysis. For example, independent analysis logically would not be already known to the company unless reported. However, a potential whistleblower that has conducted independent analysis may have a reasonable belief that disclosure would result in retaliation. These issues are best addressed by a case-by-case consideration of the circumstances.

NHTSA also wants to note that if retaliation does take place, a potential whistleblower should file a claim with the Occupational Safety and Health Administration (OSHA).[27] Retaliation includes such actions as firing or laying off, demoting, denying overtime or promotion, or reducing pay or hours.[28]

G. Provision of False Information (§ 513.8)

Proposed § 513.8 tracked the language of 49 U.S.C. 30172(g), which states that a person who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any writing or document knowing it to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award and shall be subject to prosecution under 18 U.S.C. 1001.

NHTSA received no comments on proposed § 513.8. NHTSA is adopting this rule as proposed.

H. Procedures for Making a Claim for a Whistleblower Award (§ 513.9)

Proposed § 513.9 included a description of steps a whistleblower is required to follow to make an application for an award. The proposed process would begin with the Agency posting a ''Notice of Covered Action'' (Notice) on NHTSA's website whenever any administrative or judicial action, including any related administrative or judicial action, brought by the U.S. Department of Transportation, NHTSA, or U.S. Department of Justice under 49 U.S.C. Chapter 301 in the aggregate results in collected monetary sanctions exceeding $1,000,000. The proposed Notice is published subsequent to a final judgment, order, or agreement that alone, or in the aggregate, results in collected monetary sanctions exceeding $1,000,000. For clarity, NHTSA will only post a Notice of Covered Action for any such action after the effective date of this rule.[29]

Hyundai commented generally in support of the procedures in proposed § 513.9. Kohn proposed an agency obligation to notify known whistleblowers about a ''Notice of Covered Action'' that is related to the information provided by that whistleblower. Additionally, Kohn proposed an agency requirement, like that of the IRS, whereby NHTSA must submit a form stating whether or not the investigators relied on information from an individual resulting in an enforcement action. Kohn and the National Whistleblower Center proposed a deadline for NHTSA to make a preliminary award determination within 180 days of the posting of the notice and a final decision within one year of the publication of the Notice.

NHTSA intends to inform known whistleblowers or their counsel of the Notice, but does not believe that it is necessary to codify. NHTSA disagrees with submitting a form stating whether or not the investigators relied on information from an individual resulting in an enforcement action. NHTSA is a much smaller organization than the IRS and does not believe that the burden of preparing such a form is outweighed by the benefit.

Also, NHTSA disagrees with the proposed requirement to impose a particular deadline on issuing an award decision after the Notice. The length of time to complete the Agency's assessment may depend on multiple factors, including whether follow-up is needed to clarify issues raised by the award claim and the complexity of the legal and factual issues involved, as well as agency resources and priorities. Additionally, due to its size, NHTSA does not have a dedicated whistleblower office.

Kohn supported the allowance of emailed filings and the proposed WB–AWARD form. Kohn also agrees that all persons meeting the requirements should be eligible for an award regardless of citizenship. These comments are consistent with the rule as proposed.

The NPRM proposed that a claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim, including any attachments, for an award based on that action, or the claim will be barred. However, Kohn proposed that if the 90th day falls on a weekend or federal holiday, the deadline should be the next business day. NHTSA agrees and has changed the regulatory text to ensure clarity on this issue.

I. Award Determinations (§ 513.10)

Proposed § 513.10 described the award determination process. 513.10(b) implements 49 U.S.C. 30172(c), as delegated to the NHTSA Administrator, and provides that the determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Administrator. NHTSA requested comment regarding whether the Agency should limit its discretion and, if so, in what way.

Although 49 U.S.C. 3017(c) provides the Secretary with discretion as to

[27] *See https://www.dol.gov/general/topics/whistleblower.*

[28] *See* 15 U.S.C. 2087. If a claim is filed under 15 U.S.C. 2087, it needs to be filed within 180 days of the occurrence of the discriminatory action.

[29] NHTSA also posts information on civil penalties collected on its website at *https://www.nhtsa.gov/laws-regulations/civil-penalty-settlements.*

whether to make an award, Constantine Cannon, Cohen Milstein, and Kohn commented that § 513.10 should make awards mandatory. Commenters pointed to a few mandatory award programs and their success to support this proposal. Commenters proposed a mandatory award program is needed because it will incentivize whistleblowers who fear losing their livelihood to report information. Additionally, commenters suggested mandatory financial incentives help potential whistleblowers partner with counsel they would not otherwise be able to afford to represent them through the legal process. Constantine Cannon claimed the rare and unusual circumstances presented by NHTSA in the NPRM where an award would be denied have never occurred and should not be used as reason to retain discretion. Similarly, Cohen Milstein argues the occurrences listed by NHTSA in the NPRM are already contemplated and addressed by 49 U.S.C. 30172(c)(2)(A) and (B), which expressly limit award disqualification to situations where a whistleblower's own violations relate to the violations that are subject of the enforcement action. Cohen Milstein also proposed the statutory floor of a whistleblower award at 10% would be redundant if the Administrator had discretion to award no award at all. Additionally, Kohn argued judicial review is not enough to prevent the abuse of discretion to deny rewards for any reason because courts will not overturn denials.

After consideration of the comments, NHTSA believes that it is important to retain discretion. The reward mandates found in the False Claims Act and the Dodd-Frank Act use different language from that found in 49 U.S.C. 30172(c). 49 U.S.C. 30172(c) explicitly provides discretion to determine ''*whether,* to whom, or in what amount to'' make a whistleblower award (emphasis added). Congress explicitly gave NHTSA discretion it gave neither under the False Claims Act nor under the Dodd-Frank Act.[30] Therefore, a complete elimination of that discretion, as proposed by commenters, would be inconsistent with the language of the Whistleblower Act. Further, NHTSA does not believe the statutory floor of 10% is redundant if NHTSA has the discretion to not make an award. NHTSA believes the 10% is a statutory floor if NHTSA decides to make an award. As described in the NPRM, this discretion would allow NHTSA to retain the ability to address rare circumstances. NHTSA does not believe this discretion should be a meaningful consideration for prospective whistleblowers. NHTSA likewise has discretion as to whether or not to pursue an enforcement action, and if so, the appropriate penalty.

One individual commenter and Ford suggested the Agency develop a well-defined award matrix and include in § 513.10(a) the factors considered when determining whether, to whom, and in what amount to make an award. The National Whistleblower Center proposed such language that specifically outlines when the Secretary may increase or decrease the percentage of the award paid to the whistleblower. Proposed factors to consider that may lead to an increase in percentage include (1) the significance of the information, (2) assistance provided by the whistleblower, (3) law enforcement interest, (4) participation in internal compliance systems and reporting mechanisms, (5) whether the whistleblower resides outside the United States, (6) the extent to which the award will encourage non-US citizens to provide information, and (7) whether the whistleblower promptly contacted federal or state law enforcement. Proposed factors to consider that may decrease a whistleblower award include (1) culpability, (2) an unreasonable reporting delay, and (3) interference with internal compliance and reporting mechanisms. These factors are similar to those found in the False Claims Act and the Dodd-Frank Act.

NHTSA disagrees that adopting a formalized matrix or factors beyond those already proposed is necessary or appropriate at this time. 49 U.S.C. 30172(c) already contains some of the factors proposed by the National Whistleblower Center, including the significance of information,[31] assistance provided by the whistleblower,[32] and participation in internal compliance systems and reporting mechanisms.[33] These factors give guidance both to NHTSA and stakeholders, while retaining flexibility to consider the unique circumstances of each case. NHTSA also specifically disagrees with adding an award factor that directs NHTSA to consider law enforcement interest. This is a factor found in the CFTC's regulations, 17 CFR 165.9(3)(b), which states, ''the Commission will assess its programmatic interest in deterring violations of the Commodity Exchange Act by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws.'' NHTSA believes this is goal is already encompassed in consideration of the ''public interest'' found in proposed § 513.10(b)(5). Further, NHTSA disagrees with considering whether the whistleblower resides outside the United States and the extent to which the award will encourage non-U.S. citizens to provide information. Non-U.S. citizens are eligible for whistleblower awards and NHTSA does not believe that this is relevant to the amount of the award. Many vehicles and parts are manufactured outside the United States and many companies that sell in the United States also conduct business around the world. Thus, whistleblowers outside the United States have information highly relevant to NHTSA's vehicle safety work. As explained above, NHTSA has already made a whistleblower award to an individual who was employed in South Korea, which led to one of the largest enforcement actions in NHTSA's history. Additionally, the NPRM already included a factor regarding the statutory purpose of incentivizing whistleblowers. NHTSA does not believe there is a need to bifurcate that factor into incentivizing U.S. citizens specifically. Finally, NHTSA disagrees with enumerating factors for decreasing a whistleblower award. Many of these factors already will lead to disqualification of a whistleblower from receiving an award as mentioned in the above discussion of proposed § 513.7. Each whistleblower award application will contain a unique set of facts and circumstances that NHTSA will consider.

In the NPRM, NHTSA noted, in making a determination of a whistleblower award, the Agency anticipates reviewing relevant materials such as the claimant's WB–AWARD

[30] *See* 31 U.S.C. 3730(d) (''If the Government proceeds with an action brought by a person under [the False Claims Act], such person *shall,* subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim'') (emphasis added); *see also* 7 U.S.C. 26 (''[T]he Commission . . . *shall* pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to—(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and (B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.'') (emphasis added); *see also* 29 U.S.C. 7623(b)(1) (''If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual *shall* . . . receive as an award . . .'' (emphasis added)).

[31] *See* 49 U.S.C. 30172(c)(1)(B)(ii).

[32] *See id.* 30172(c)(1)(B)(iii).

[33] *See id.* 30172(c)(1)(B)(i).

form, other filings or submissions from the potential whistleblower, materials from NHTSA staff, sworn declarations, and any other materials that may be relevant to the determination. In the NPRM, NHTSA requested comment on whether it should review information from outside persons, such as the company that was liable for the civil penalties. In the NPRM, NHTSA stated its tentative view that outside parties should not be able to insert themselves into the award process and submit information during the award determination.

Commenters generally agreed with NHTSA's tentative view that the Agency should not review information from outside persons, such as the company that was liable for the civil penalties. Commenters agreed that NHTSA's confidentiality obligations prohibit sharing with third parties a whistleblower's contribution to a successful action. Additionally, Constantine Cannon and Kohn suggested it would be unfair to a whistleblower to have to litigate with a third party whether the whistleblower deserved an award. Further, Kohn proposed that allowing information from outside persons would offer a company an opportunity to submit derogatory information about the whistleblower. NHTSA agrees with commenters and therefore will not generally consider submissions of information from outside persons or third parties when making an award determination. This determination does not preclude the Agency from considering investigative material, much of which likely came from the company liable from the civil penalty or other outside sources. Moreover, this determination does not preclude the Agency from following up, as appropriate, should it need additional information to consider the award claim.

J. Appeals of Award Determinations (§ 513.11)

In accordance with 49 U.S.C. 30172(h)(2), the proposed § 513.11 outlined the procedures for a claimant to appeal any award determination made by the Administrator under § 513.10. Proposed § 513.11(a)(2) provided that if any claimant appeals within 30 days after a final award determination is issued by the Administrator, no payments with respect to the covered action will be made to any whistleblower in the action until the appealed award determination action is concluded. NHTSA requested comment on this position.

Most commenters supported or had no comments regarding the proposed § 513.11. However, Cohen Milstein commented that § 513.11 is too broad and NHTSA should not withhold uncontested portions of a whistleblower award during an appeal. Cohen Milstein proposed that even with multiple whistleblowers contesting an award amount, there is no reason to withhold a minimum uncontested amount to each whistleblower.

However, NHTSA disagrees and believes that finality is important before initiating payment. As stated in the NPRM, NHTSA is constrained by the statute as to what percentage of the collected monetary sanctions in a covered action it may award to all whistleblowers. Any appeal could affect the amount paid. For example, if a court found that the Agency erroneously determined an individual eligible, it is possible even the uncontested portion of an award would be invalidated.

K. Form WB–INFO (Appendix A)

The Agency proposed to include form WB–INFO in Appendix A to part 513 to capture basic information about a potential whistleblower, the potential whistleblower's legal representative (if applicable), the motor vehicle manufacturer, part supplier or dealership about whom the concern is raised, the potential whistleblower's current employer and address, and the potential whistleblower's relationship to the company about which the concern is raised.

Auto Innovators proposed a new field on the form explaining why the information relates to a matter that is likely to cause unreasonable risk of death or serious injury. Auto Innovators reasoned this proposal will allow NHTSA to quickly determine whether the submitted information is appropriate for the whistleblower program.

NHTSA disagrees, as this determination is more appropriately made by NHTSA and the information already required by the form will inform that issue.

L. Form WB–RELEASE (Appendix B)

In the NPRM, NHTSA proposed form WB–RELEASE in Appendix B for those whistleblowers who wish to provide prior written consent for the Agency to disclose information that could reasonably be expected to reveal the whistleblower's identity. NHTSA requested comment on whether the form WB–RELEASE should be prescribed by regulation, whether it would be better to specify the content of the form (and not the form itself), or whether the Agency should take a different approach.

Kohn objected to the release form because of concerns that a potential whistleblower may interpret the release form as something that must be done to please investigators and investigators may use the form without considering specific circumstances. Kohn proposed any waiver of confidentiality should be done on a case-by-case basis and points to the IRS, SEC, and CFTC programs that do not use a similar form.

Due to the way NHTSA investigates, in the course of an inquiry or analysis surrounding a whistleblower's allegations, it may become necessary for NHTSA to reveal information that reasonably could be expected to reveal the whistleblower's identity to persons or their counsel or agents at the organization or institution against whom such allegations are made. Such information could also be revealed to other entities if necessary for NHTSA to gather needed information on the alleged safety issue or misconduct that the whistleblower has brought to the Agency's attention. The WB–RELEASE form provides whistleblowers a way to provide such consent. Consent is voluntary, as expressly indicated on the form. The Agency may request that a whistleblower provide such consent, as such consent may facilitate NHTSA's review of the information.

M. Form WB–AWARD (Appendix C)

The NPRM also proposed WB–AWARD in Appendix C to part 513. Proposed form WB–AWARD, and the instructions thereto, requested basic information about a claimant and the claimant's legal representative (if applicable), the issue/information submitted by the claimant, information regarding the Notice of Covered Action, information on how the claimant acquired the original information, as well as other information relevant to the claimant's eligibility for an award. Specifically, the form asks whether the potential whistleblower is the subject or target of a criminal investigation connected to the information at issue.

Constantine Cannon proposed the removal of the requirement for a whistleblower to disclose on proposed WB–AWARD form information about whether the potential whistleblower is currently the subject or target of a criminal investigation connected to the information at issue. Constantine Cannon suggested the disclosure is contrary to Congress's intent because Congress mandated a bar for those convicted of criminal violations, not individuals being investigated for a criminal violation. Similarly,

Constantine Cannon proposed that a person might not know if they are the subject of a criminal investigation and therefore be unable to honestly respond to the question on the WB–AWARD form.

NHTSA disagrees. The requirement makes the Agency aware of criminal investigations, to the extent known to the claimant. The regulations still only bar a person from receiving an award if they are convicted rather than if they are only investigated. A potential whistleblower will not be barred from receiving an award because they did not disclose a criminal investigation of which they were unaware. NHTSA is adopting the form as proposed, without substantive change.

III. Regulatory Analyses and Notices

Executive Order 12866, Executive Order 13563, Executive Order 14094, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, Executive Order 14094, and the Department of Transportation's regulatory policies and procedures. This final rule is nonsignificant under E.O. 12866 and E.O. 14094 and was not reviewed by the Office of Management and Budget (OMB). It is also not considered ''of special note to the Department'' under DOT Order 2100.6A, Rulemaking and Guidance Procedures.

This action adds part 513 to implement the whistleblower program. This is a program for whistleblowers to voluntarily submit information to NHTSA and potentially receive monetary awards. The rule formalizes certain procedures for the whistleblower program, including through the use of forms to help provide guidance to whistleblowers, organize information submitted to the Agency, and ensure the Agency receives the information needed to make determinations on whistleblower awards. Because the Agency expects any costs, benefits, or savings associated with this rulemaking to be minimal, we have not prepared a separate economic analysis for this rulemaking.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* NHTSA has evaluated the effects of this action on small entities. I certify that this final rule is not expected to have a significant economic impact on a substantial number of small entities. The rules apply only to those employees and contractors of motor vehicle manufacturers, part suppliers, or dealerships who provide information to the Agency relating a potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301 (or regulation thereunder), which is likely to cause unreasonable risk of death or serious physical injury. Companies and other entities are not eligible to participate in the program as whistleblowers. Consequently, the persons that are subject to this final rule are not ''small entities'' for the purposes to the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this action.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. In accordance with 49 CFR 1.81, 42 U.S.C. 4336, and DOT NEPA Order 5610.1C, NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4) (planning and administrative activities, such as promulgation of rules, that do not involve or lead directly to construction). This rule is not anticipated to result in any environmental impacts and there are no extraordinary circumstances present in connection with this rulemaking.

This rule defines certain terms important to the operation of the whistleblower program, outlines the procedures for submitting original information to NHTSA and applying for awards, discusses NHTSA's procedures for making decisions on award applications, and generally explains the scope of the whistleblower program to the public and potential whistleblowers. NHTSA's decisions on who qualifies as a whistleblower and who is eligible to receive a whistleblower award would constitute separate agency actions that are independent of this final rule. Similarly, the information that NHTSA will receive from whistleblowers under this final rule will already exist, and therefore, will be independent of this final rule. Finally, all current and former employees or contractors who are potential whistleblowers under this rule will choose to submit information voluntarily to NHTSA. Consequently, this rule is not expected to significantly affect the quality of the human environment.

Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with states, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that this action would not have ''federalism implications'' because it would not have ''substantial direct effects 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,'' as specified in section 1 of the Executive Order. This rule generally applies to employees and contractors of motor vehicle manufacturers, part suppliers, or dealerships. Thus, Executive Order 13132 is not implicated and consultation with state and local officials is not required.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This final rule does not result in the expenditure by state, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Pursuant to this Order, NHTSA notes as follows: This final rule implements the whistleblower program, including outlining the procedures for submitting original information, applying for awards, the Agency's procedures for making decisions on the claims, appeals of such decisions, and payment of the award. It discusses communications with individuals reporting safety

information and protections afforded related to the whistleblowers' identity. The statute was effective upon enactment.

The rule will not have retroactive effect. Under the rule of construction contained in Section 24352(b) of the FAST Act, information submitted by a whistleblower in accordance with the requirements at 49 U.S.C. 30172 does not lose its status as original information solely because the whistleblower submitted the information prior to the effective date of these regulations if that information was submitted after the date of enactment of the FAST Act. In accordance with section 24352(b) of the FAST Act, the statute does not retroactively qualify information submitted prior to the enactment of the FAST Act as original information eligible for whistleblower protection or monetary award. The rule likewise does not have retroactive application to information submitted prior to enactment of the FAST Act.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule does not meet the criteria in 5 U.S.C. 804(2) to be considered a major rule.

Regulation Identifier Number

The DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number. The Information Collection Request (ICR) for a proposed new information collection described below has been forwarded to OMB for review and comment.

NHTSA did not receive any comments that directly addressed its PRA analysis or its burden estimates discussed in the NPRM. As described above, this final rule requires the same information to be collected as was proposed in the NPRM. However, NHTSA did receive one comment about a voluntary potential burden that is separate from NHTSA's three required forms. This comment addressed the Agency's proposed suggestion for potential whistleblowers under binding nondisclosure agreements to consult private counsel before providing information to NHTSA. We discuss that comment and potential burden below.

The titles for the collection of information are forms: (1) WB–INFO, (2) WB–RELEASE, and (3) WB–AWARD. Under § 513.4 and § 513.9, these forms are necessary to implement section 30172 of the Safety Act.

The WB–INFO form allows a whistleblower to provide information to the Agency and its staff relating to general information about the whistleblower, information about the motor vehicle manufacturer, part supplier, or dealership about whom the concern is raised, the type and source of information being reported, the individual's legal representative (if applicable), the information about any potential motor vehicle defect, potential noncompliance, or violation or alleged violation of any notification or reporting requirement of Chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, and additional information.

Form WB–RELEASE provides a means for a whistleblower to provide prior written consent for the Agency to disclose information which could reasonably be expected to reveal the whistleblower's identity.

The WB–AWARD form allows the claimant to provide information related to the claimant's eligibility for an award.

Summary of the Collection of Information:

Form WB–INFO, which would be submitted pursuant to § 513.4, requests the following information:

(1) Background information regarding the person submitting the form, including the person's name, contact information and occupation and the person's relationship to the company about whom the concern is raised;

(2) Information about the motor vehicle manufacturer, part supplier or dealership about which the concern is raised;

(3) If the person is represented by a legal representative, the name and contact information for the person's legal representative (in cases of anonymous submissions the person must be represented by a legal representative);

(4) Information regarding the issue involving a motor vehicle manufacturer, part supplier, or dealership, including the date of the alleged issue, whether the conduct is on-going, and whether the person or their counsel had any prior communication with NHTSA;

(5) Whether the allegation is related to a potential safety-related defect or noncompliance with an applicable Federal Motor Vehicle Safety Standard, and if so a detailed description of the allegation and how the allegation affects vehicle/system/component performance and/or compliance, and the make, model, model year, part number, component number, etc., if known;

(6) Whether the allegation is related to any violation or alleged violation of any notification or reporting requirement of the Safety Act, and if so, a description of the notification or reporting issue, including all facts pertinent to the alleged violation;

(7) A description of supporting materials in the whistleblower's possession and the availability and location of other additional supporting materials;

(8) A description of how the person learned about or obtained the information submitted, and, if any information was obtained from a public source, a description of that source;

(9) Identification of documents or other information in the submission that the person believes could reasonably be expected to reveal the person's identity and the basis for that belief;

(10) Whether the person or legal representative of the person has taken any other action regarding the issue, and if so, a description;

(11) Whether the person acquired the information through a means or manner that has been determined by a United States federal court or a state court to violate applicable federal or state criminal law, and if so, details regarding that determination;

(12) Whether the person acquired the information solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine;

(13) Any other relevant information;

(14) A declaration, signed under penalty of perjury under the laws of the United States, that the information provided to NHTSA is true and correct to the best of the person's knowledge, information and belief and acknowledgement from the person that they may be subject to prosecution and ineligible for a whistleblower award if, in their submission of information, their other dealings with NHTSA, or their dealings with another authority in connection with a related action, they knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry; and

(15) If represented by a legal representative, the legal representative's certification certifying that the legal representative has verified the identity of the individual who completed form WB–INFO by viewing that individual's valid, unexpired government issued identification, reviewed the individual's WB–INFO form for accuracy, and that the information contained therein is true and correct to the best of the legal representative's knowledge, information and belief; that the legal representative will retain an original, signed copy of the form with section F filled out by their client in their file; and that the legal representative has obtained the whistleblower's non-waivable consent to provide NHTSA with the whistleblower's original signed WB–INFO form in the event that NHTSA requests it.

Form WB–RELEASE requests the following information:

(1) Background information regarding the whistleblower submitting the WB–RELEASE form, including the person's name and address;

(2) The name of the motor vehicle manufacturer, part supplier and/or dealership to which the whistleblower's issue or information relates;

(3) An acknowledgment that the person consents to disclosure of information that could reasonably be expected to reveal the person's identity; and

(4) Signature of the whistleblower and date.

Form WB–AWARD, which would be submitted pursuant to § 513.9 requires the following information:

(1) The claimant's name, address and contact information;

(2) If the person is represented by a legal representative, the name and contact information for the legal representative;

(3) Details concerning the issue, including the manner in which the information was submitted to NHTSA, the date when the information was submitted, the form in which it was submitted, and the name of the motor vehicle manufacturer, part supplier and/or dealership to which the issue or information relates;

(4) Information concerning the Notice of Covered Action to which the claim relates, including the date of the Notice, the Notice Number, and the Case name and number; and information regarding related actions, if applicable;

(5) Information relating to the claimant's eligibility for an award, including whether the person acquired the information solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine; whether the person acquired the original information by a means or manner that was determined by a United States federal court or state court to violate applicable federal or state criminal law; and whether the person is currently a subject or target of a United States federal or state criminal investigation or has been convicted of a criminal violation by a United States federal or state court in connection with the allegations or conduct the person submitted to NHTSA. If any of the circumstances noted above were applicable, the person is requested to provide an explanation;

(6) An explanation of the reasons that the person believes an award in connection with the person's submission of information to NHTSA is warranted, including any information that might be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. 30172 and 49 CFR part 513; and

(7) A declaration by the claimant under penalty of perjury under the laws of the United States that the information provided in the WB–AWARD form is true and correct to the best of the person's knowledge, information and belief and acknowledgement from the person that they may be subject to prosecution and ineligible for a whistleblower award if, in their submission of information, their other dealings with NHTSA, or their dealings with another authority in connection with a related action, they knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

Description of the Need for the Information and Use of the Information:

The collection of information on form WB–INFO will be used to permit the Agency and its staff to collect information from whistleblowers regarding any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act or regulation thereunder for which NHTSA has enforcement authority. NHTSA investigators consider information provided by whistleblowers, which may lead to formal actions like an investigation, recall, or civil penalty enforcement action. If this information leads to a successful resolution of a covered action resulting in monetary sanctions collected by the United States in excess of $1,000,000, a whistleblower would be eligible for an award.

The WB–RELEASE form will provide a means for the whistleblower to provide consent for the Agency to disclose information that could reasonably be expected to reveal the identity of the whistleblower. Being able to disclose this information may allow the Agency to open a public investigation or proceed more efficiently with an investigation into the whistleblower's allegations. This form is not required.

The WB–AWARD form will permit the Agency to collect information relating to a claimant's eligibility for an award, the claimant's position on why they should receive an award, and the claimant's view on the criteria for determining the amount of an award. This information would allow the Administrator to determine claims for whistleblower awards.

Finally, there is a potential limited number of respondents who may need to consult with private counsel about a binding nondisclosure agreement prior to the potential whistleblower submitting a WB–INFO form to NHTSA. This is an optional, voluntary step that some potential whistleblowers may choose to take so they can receive legal advice with respect to whether a confidentiality agreement with their employer prohibits them from submitting information to NHTSA.

Affected Public:

The likely respondents to form WB–INFO are those employees or contractors of motor vehicle manufacturers, part suppliers, and dealerships who wish to provide the Agency staff with information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act

or regulation thereunder that is likely to cause unreasonable risk of death or serious physical injury.

The likely respondents to form WB–RELEASE are those individuals who wish to provide prior written consent to NHTSA for disclosure of information that could reasonably be expected to reveal that individual's identity.

The likely respondents to form WB–AWARD will be those individuals who have provided the Agency with original information by filing a WB–INFO form, and who believe they are eligible for an award under 49 CFR part 513.

The potential likely respondents who may need to consult with private counsel prior to submitting a WB–INFO form to NHTSA are those individuals who signed a binding nondisclosure agreement.

Estimated Number of Respondents for Form WB–INFO:

Since the enactment of the FAST Act in 2015, NHTSA has received approximately 300 submissions that it has considered potential whistleblower submissions.[34] The Agency estimates that there will be approximately 50 individuals per fiscal year who may wish to file such form. The Agency estimated the number of individuals based on the current number of whistleblower submissions and the Agency's view that submissions will increase once the whistleblower reward program is more widely known, after the rules are promulgated and additional whistleblower awards are made.

Frequency of Form WB–INFO:

The Agency expects that the individual will complete one form detailing all potential issues they are aware of.

Number of Responses for Form WB–INFO:

The Agency anticipates there will be approximately 50 individuals per fiscal year who may wish to file such a form. NHTSA assumes half of this number will have a legal representative.

Estimated Total Annual Burden Hours for Form WB–INFO:

NHTSA estimates an average of 10 burden hours per individual who completes the WB–INFO form, and 20 hours per individual who has a legal representative complete the WB–INFO form. The completion time will depend largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of the allegations. The Agency estimates that the total annual PRA burden of form WB–INFO is 750 hours per year (25 respondents who use a legal representative × 20 hours) plus (25 respondents who fill out their own form × 10 hours).

Estimated Total Annual Burden Cost for Form WB–INFO:

NHTSA estimates the total annual burden cost for the Form WB–INFO to be $266,000. NHTSA bases the estimate on the following:

Costs for Legal Representatives to Fill out the Form WB–INFO:

Under the final rule, a potential whistleblower who discloses their identity may elect to retain a legal representative, while an anonymous potential whistleblower is required to retain a legal representative. The Agency expects that in most of those instances where a legal representative is retained, the whistleblower/claimant's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a whistleblower/claimant is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for attorneys' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. The Agency believes that approximately half of potential whistleblowers will have a legal representative submit the forms. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

(i) The Agency will receive approximately 50 WB–INFO forms annually;

(ii) Of these approximately 50 WB–INFO forms, potential whistleblowers will have a legal representative submit approximately 25 WB–INFO forms;

(iii) Legal representative cost will be on average $532 [35] per hour; and

(iv) Legal representatives will bill on average 20 hours to review materials and complete form WB–INFO.[36]

Based on those assumptions, the Agency estimates that each year the cost of legal representative time for completion of the forms will be $266,000 for the completion of form WB–INFO (($532 × 20 hours) × 25 respondents).

Costs of Submission

The Agency anticipates that the vast majority of whistleblowers/claimants will submit the forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is $0.00.

Estimated Number of Respondents for Form WB–RELEASE:

The Agency estimates that it will receive 45 WB–RELEASE forms per year.

Frequency of Form WB–RELEASE:

The Agency expects that an individual will complete one form per year.

Number of Responses for Form WB–RELEASE:

The Agency anticipates there will be approximately 45 individuals per fiscal year who may wish to file a form WB–RELEASE.

Estimated Total Annual Burden Hours for Form WB–RELEASE:

The Agency estimates that it will take 15 minutes per individual to complete the form, and the Agency estimates that it would receive 45 WB–RELEASE forms per year. The Agency anticipates that potential whistleblowers will complete and submit for themselves 20 WB–RELEASE forms annually and that legal representatives will submit on their client's behalf 25 WB–RELEASE forms annually. Thus, the Agency estimates that that estimated annual PRA burden of form WB–RELEASE is 11.25 hours per fiscal year (45 respondents × 15 minutes/60).

Estimated Total Annual Burden Cost for Form WB–RELEASE:

NHTSA estimates the total annual burden cost for the Form WB–RELEASE to be $3,325. The Agency bases the estimate on the following:

Involvement and Cost of Legal Representatives:

[34] Because there has not been a required method or form of submission, NHTSA has taken a broad view of what is considered whistleblower information. Such information comes from a variety of sources, such as Vehicle Owner Questionnaires (''VOQ''), information provided by telephone, and information submitted by letter or email to the Agency. NHTSA has taken this broad view not only to review and track the information submitted, but also to better protect the confidentiality of those who have provided whistleblower information to the Agency.

[35] This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015–2021, assuming that an attorney with 11–15 years of experience assists the whistleblower. *See https://www.justice.gov/file/1461316/download.*

[36] The Agency expects that counsel will need to expend additional time to gather information from the whistleblower or review sources of information needed to complete the forms, which is why this estimate is higher than the estimate to just complete the form.

Under the Final Rule, a potential whistleblower who discloses their identity may elect to retain a legal representative, while an anonymous potential whistleblower is required to retain a legal representative. The Agency expects that in most of those instances where a legal representative is retained, the potential whistleblower's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a potential whistleblower is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for attorneys' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

(i) The Agency will receive 45 WB–RELEASE forms annually;

(ii) Potential whistleblowers will have a legal representative submit approximately 25 WB–RELEASE forms annually;

(iii) Attorney cost will be on average $532 [37] per hour; and

(iv) Attorneys will bill on average 15 minutes to complete form WB–RELEASE.

Based on those assumptions, the Agency estimates that each year the cost of attorney time for completion of the forms will be $3,325 for the completion of form WB–RELEASE (($532 × 15 minutes/60) × 25 respondents).

Costs of Submission

The Agency anticipates that the vast majority of potential whistleblowers will submit the forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is $0.00.

Estimated Number of Respondents for Form WB–AWARD:

Each individual who has submitted a form WB–INFO and wishes to be considered for an award under the program would be required to provide a WB–AWARD form to the Agency. A claimant could only submit a WB–AWARD form after there has been a ''Notice of Covered Action'' published on the Agency's website pursuant to § 513.9. The Agency estimates that it will post approximately 1–2 such Notices each year. The Agency bases this estimate by looking at the enforcement actions resulting in civil penalties exceeding $1,000,000 over the last several years, not including deferred penalties not collected or performance amounts. In some years, the Agency did not collect any civil penalties exceeding $1,000,000. In another year, the Agency had several instances where it collected more than $1,000,000 in civil penalties in connection with an enforcement action. The Agency believes that as this whistleblower program grows, more actionable submissions will be made and, as a consequence, the Agency will have more actions resulting in collected monetary sanctions exceeding $1,000,000.

Considering the estimate of the anticipated yearly covered actions, and the Agency's experience to date, the Agency estimates that it would receive approximately 2 WB–AWARD forms each year.[38]

Frequency of Form WB–AWARD:

The Agency expects that the individual will complete one form.

Number of Responses for Form WB–AWARD:

The Agency anticipates there will be approximately 2 individuals per fiscal year who may wish to file such.

Estimated Total Annual Burden Hours for Form WB–AWARD:

The collection is estimated to involve approximately 10 burden hours per individual seeking to be considered for an award under the Agency's whistleblower program. The Agency estimates that the estimated annual PRA burden of form WB–AWARD is 20 hours per fiscal year (2 respondents × 10 hours).

Estimated Total Annual Burden Cost for Form WB–AWARD:

The Agency estimates the total annual burden cost for the Form WB–AWARD to be $10,640. The Agency bases the estimate on the following:

Involvement and Cost of Legal Representatives

Under the final rule, a potential whistleblower who discloses their identity may elect to retain a legal representative, while an anonymous potential whistleblower is required to retain a legal representative. The Agency expects that in most of those instances where a legal representative is retained, the potential whistleblower/claimant's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a potential whistleblower/claimant is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for legal representatives' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. However, the Agency does believe that all individuals submitting a WB–AWARD form will use a legal representative. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

(i) The Agency will receive approximately 2 WB–AWARD forms annually;

(ii) Claimants will have a legal representative submit 2 WB–AWARD forms annually;

(iii) Legal representative cost will be on average $532 [39] per hour; and

(iv) Legal representatives will bill on average 10 hours to complete a form WB–AWARD.

Based on those assumptions, the Agency estimates that each year the cost of legal representatives' time for completion of the forms will be $10,640 for the completion of form WB–AWARD (($532 × 10 hours) × 2 respondents).

Costs of Submission

The Agency anticipates that the vast majority of claimants will submit the

[37] This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015–2021, assuming that an attorney with 11–15 years of experience assists the whistleblower. *See https://www.justice.gov/file/1461316/download.*

[38] While it is unlikely that there will be whistleblower information provided in connection with every Notice of Covered Action posted by the Agency, this estimate calculates burden hours as if there were one claim for each Covered Action.

[39] This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015–2021, assuming that an attorney with 11–15 years of experience assists the whistleblower. *See https://www.justice.gov/file/1461316/download.*

forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is $0.00.

Mandatory Collection of Information

As proposed in the NPRM, a person will be required to complete and submit a WB–INFO form and to submit a WB–AWARD form to qualify for a whistleblower award.

Optional Annual Burden Cost Associated With Collection of a WB–INFO Form

Consulting with private counsel about a nonbinding disclosure agreement is a voluntary, optional burden cost; however, it is a voluntary burden cost that some potential whistleblowers might need to take prior to submitting a WB–INFO form to NHTSA.

As discussed above, NHTSA received a comment from Kohn that disagreed with NHTSA's suggestion in the NPRM that potential whistleblowers under binding nondisclosure agreements consult private counsel before submitting a WB–INFO form to NHTSA. As noted above, NHTSA is obligated to adhere to and support a whistleblower's statutory protections, but NHTSA's attorneys do not represent whistleblowers. Therefore, if a whistleblower needs legal advice, they should obtain their own private legal counsel.

Estimated Number of Respondents Consulting Private Counsel About a Binding Nondisclosure Agreement:

The Agency estimates that five potential whistleblowers per year will consult private counsel about a binding nondisclosure agreement with their employer. This estimate is based on the approximately 50 individuals per year who may submit whistleblower information to the Agency. This estimate is also based on potential whistleblowers who consider submitting information to the Agency but choose not to submit information to the Agency after consulting with private counsel about a binding nondisclosure agreement with their employer.

Estimated Total Annual Burden Hours for Respondents Consulting Private Counsel About a Binding Nondisclosure Agreement:

The Agency estimates that each private counsel will take approximately two hours to review a binding nondisclosure agreement, and the Agency estimates that five potential whistleblowers may consult with private counsel about a binding nondisclosure agreement per year. Thus, the Agency estimates that the estimated annual PRA burden of consulting with private counsel about a binding nondisclosure agreement is 10 hours per fiscal year (five respondents × two hours).

Estimated Annual Cost of Respondents Consulting Private Counsel About a Binding Nondisclosure Agreement:

NHTSA estimates the total annual burden cost for respondents consulting with private counsel about a binding nondisclosure agreement to be $5,320. The Agency bases the estimate on the following:

Involvement and Cost of Legal Representatives:

To estimate those expenses, the Agency makes the following assumptions:

(i) The Agency will receive 50 whistleblower submissions annually;

(ii) Five potential whistleblowers will consult with private counsel about a binding nondisclosure agreement annually;

(iii) Attorney costs will be on average $532 per hour; and

(iv) Attorneys will bill on average two hours to review a binding nondisclosure agreement.

Based on those assumptions, the Agency estimates that each year the cost of attorney time for consultation about a binding nondisclosure agreement will be $5,320 (($532 × two hours) × five respondents).

List of Subjects in 49 CFR Part 513

Administrative procedure and practice, Appeal procedures, Claims, Investigations, Imports, Lawyers, Motor vehicle safety, Privacy, Reporting and record keeping requirements, Tires, Whistleblowing.

■ For the reasons discussed in the preamble, NHTSA adds 49 CFR part 513 to read as follows:

PART 513—WHISTLEBLOWER PROGRAM

Sec.

513.1 General.
513.2 Definitions
513.3 Representation.
513.4 Procedures for submitting original information.
513.5 Confidentiality.
513.6 Prerequisites to the consideration of an award.
513.7 Whistleblowers ineligible for an award.
513.8 Provision of false information.
513.9 Procedures for making a claim for a whistleblower award.
513.10 Award determinations.
513.11 Appeals of award determinations.
513.12 Procedures applicable to the payment of awards.
Appendix A to Part 513—Form WB–INFO
Appendix B to Part 513—Form WB–RELEASE
Appendix C to Part 513—Form WB–AWARD

Authority: 49 U.S.C. 322 and 49 U.S.C. 30172; delegation of authority at 49 CFR 1.95.

§ 513.1 General.

This part 513 describes the whistleblower program established by the Agency to implement the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. 30172, explains procedures that a potential whistleblower must follow to be eligible for an award, and the circumstances under which information that may reasonably be expected to reveal the identity of a whistleblower may be disclosed by the National Highway Traffic Safety Administration (NHTSA). Potential whistleblowers should read these procedures carefully because failure to take required steps in a timely fashion in conformance with these rules may result in disqualification from receiving an award. Questions about the whistleblower program or these rules should be directed to the NHTSA Office of the Chief Counsel at *NHTSAWhistleblower@dot.gov*. Unless expressly provided for in this part, no person is authorized to make any offer or promise, or otherwise bind the Agency with respect to the payment of any award or the amount thereof, and any such offer or promise will not be honored.

§ 513.2 Definitions.

(a) *Statutory definitions.* All terms used in this part have the same meaning as in 49 U.S.C. 30102(a) or (b), unless otherwise defined in this part.

(b) *Other terms.* As used in this part:

Administrative action. The term ''administrative action'' means all or a portion of an action, other than a judicial action, brought by the NHTSA or the U.S. Department of Transportation under 49 U.S.C. Chapter 301 that may result in civil penalties or other monetary payment paid to and collected by the United States government. It specifically includes settlement agreements and consent orders that are entered into by the Agency.

Agency. The term ''Agency'' refers to the National Highway Traffic Safety Administration (NHTSA).

Collected monetary sanctions. The term ''collected monetary sanctions'' means monies, including penalties and interest, ordered or agreed to be paid and that have been collected by the United States, pursuant to the authority in 49 U.S.C. 30165 or under the authority of 49 U.S.C. 30170.

Contractor. The term ''contractor'' means an individual presently or formerly providing goods or services to

a motor vehicle manufacturer, part supplier, or dealership pursuant to a contract.

Covered action. The term ''covered action'' means any administrative or judicial action, including any related administrative or judicial action brought by the Secretary, NHTSA, or the Attorney General under 49 U.S.C. Chapter 301, or a regulation thereunder, that in the aggregate results in monetary sanctions exceeding $1,000,000. The over $1,000,000 threshold can be satisfied if the total amount of monetary sanctions paid by multiple defendants or parties and collected by the United States totals more than $1,000,000 in the covered action.

Dealership. The term ''dealership'' means a person selling and distributing motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

Employee. The term ''employee'' means an individual presently or formerly employed by a motor vehicle manufacturer, part supplier, or dealership.

Independent knowledge or analysis. The term ''knowledge'' as used in this part means factual information in the potential whistleblower's possession that is not generally known or available to the public and is not already known to NHTSA. The potential whistleblower may gain independent knowledge from the potential whistleblower's experiences, communications, and observations in the potential whistleblower's business or social interactions. As used in this part, ''analysis'' means the potential whistleblower's examination and evaluation of information that may be generally or publicly available, but which reveals information that is not generally known or available to the public. This analysis must be the potential whistleblower's own analysis, whether done alone or in combination with others.

NHTSA will not consider the potential whistleblower's information to be derived from the potential whistleblower's independent knowledge or analysis if the potential whistleblower obtained the information:

(i) Solely through a communication that was subject to the attorney-client privilege or work product doctrine; or

(ii) By a means or in a manner that has been determined by a United States federal court or state court to violate applicable federal or state criminal law.

Motor vehicle defect. The term ''motor vehicle defect'' means a defect in a motor vehicle or item of motor vehicle equipment.

Noncompliance. A ''noncompliance'' occurs when a motor vehicle or item of motor vehicle equipment does not comply with an applicable Federal Motor Vehicle Safety Standard.

Original information. The term ''original information'' means information that—

(i) Is derived from the independent knowledge or analysis of an individual;

(ii) Is not known to the Secretary or Agency from any other source, unless the individual is the original source of the information;

(iii) Is not exclusively derived from an allegation made in a judicial or an administrative action, in a governmental report, a hearing, an audit, or an investigation, or from the news media, unless the individual is a source of the information; and

(iv) Is provided to the Agency for the first time after December 4, 2015.

Original information that leads to a successful resolution. The Agency will consider that the potential whistleblower provided original information that ''leads to'' a successful resolution of a covered action in the following circumstances:

(i) The potential whistleblower gave the Agency original information that was sufficiently specific, credible and timely to cause the Agency to open an investigation, reopen an investigation that the Agency had closed, continue an investigation the Agency would not have continued but for the information, or to inquire concerning a different potential violation of Chapter 301, or a regulation thereunder, as part of a current investigation, and the U.S. Department of Transportation, Agency, or U.S Department of Justice brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the potential whistleblower's original information; or

(ii) The potential whistleblower gave the Agency original information about conduct that was already under investigation by the Agency and the potential whistleblower's information significantly contributed to the success of the covered action and the U.S. Department of Transportation, Agency, or U.S. Department of Justice brought a judicial or administrative action that achieves a successful resolution based in whole or in part on conduct that was the subject of the potential whistleblower's original information.

Part supplier. The term ''part supplier'' means a manufacturer of motor vehicle equipment.

Potential whistleblower. The term ''potential whistleblower'' refers to an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership submitting information to the Agency in accordance with and pursuant to this part.

Related administrative or judicial action. The term ''related administrative or judicial action'' means an action that was brought under 49 U.S.C. Chapter 301 by the U.S. Department of Justice, the U.S Department of Transportation, or the Agency and is based on the original information provided by the whistleblower.

Secretary. The term ''Secretary'' means the Secretary of Transportation.

Successful resolution. A successful resolution, when referring to any administrative or judicial action brought by the Secretary, Agency, or the Attorney General relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement under 49 U.S.C. Chapter 301, or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, includes any settlement of the action by the U.S. Department of Transportation, Agency or the U.S. Department of Justice or final decision or judgment in whole or in partial favor of the Agency, the U.S. Department of Transportation, or the U.S. Department of Justice.

Whistleblower. The term ''whistleblower'' means any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who voluntarily provides to the Agency original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301, or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury.

§ 513.3 Representation.

A whistleblower or potential whistleblower may be represented by a legal representative.

§ 513.4 Procedures for submitting original information.

(a) A potential whistleblower's submission must be made by completing a WB–INFO form and submitting it to the Office of the Chief Counsel, National Highway Traffic Safety Administration, by email to *NHTSAWhistleblower@dot.gov* or other submission method expressly designated on NHTSA's website for such submissions.

(b) By completing the WB–INFO form, the potential whistleblower must declare under penalty of perjury at the time the whistleblower submits

information pursuant to paragraph (a) of this section that the information is true and correct to the best of the potential whistleblower's knowledge and belief.

(c) A potential whistleblower may provide original information to the Agency anonymously through use of a legal representative. The legal representative must submit the information on behalf of the potential whistleblower pursuant to the procedures specified in paragraph (a) of this section. Prior to the legal representative's submission, the potential whistleblower must provide the legal representative with a completed WB–INFO form that the potential whistleblower has signed under the penalty of perjury. When the legal representative makes the submission on behalf of the potential whistleblower, the legal representative must certify that the legal representative:

(1) Has verified the potential whistleblower's identity;

(2) Has verified that the potential whistleblower is an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership;

(3) Has reviewed the potential whistleblower's signed WB–INFO form for accuracy and that the information contained therein is true and correct to the best of the legal representative's knowledge, information and belief; and

(4) Has obtained the potential whistleblower's non-waivable consent to provide the Agency with the original WB–INFO form for the potential whistleblower in the event that the Agency requests it.

(d) If a potential whistleblower submitted original information to the Agency after December 4, 2015 but before January 16, 2025, the submission will be deemed to satisfy the requirements set forth in paragraphs (a) and (b) of this section.

§ 513.5 Confidentiality.

(a) *In General.* Notwithstanding 49 U.S.C. 30167, the Secretary and any officer or employee of the U.S. Department of Transportation shall not disclose any information, including information provided by a whistleblower to the Secretary, that could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of 5 U.S.C. 552a, unless:

(1) Disclosure is required to a defendant or respondent in connection with a public proceeding instituted by the Secretary, the Agency, or any entity described in paragraph (c);

(2) The whistleblower provides prior written consent for the information to be disclosed; or

(3) The Secretary, or other officer or employee of the U.S. Department of Transportation, receives the information through another source, such as during an inspection or investigation under 49 U.S.C. 30166, and has the authority under other law to release the information.

(b) *Use by Attorney General.* Notwithstanding paragraph (a) of this section, nothing in this section is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(c) *Availability to Federal Government Agencies.* Notwithstanding paragraph (a) of this section, without the loss of its status as confidential in the hands of the Administrator, all information referred to in paragraph (a) of this section may, in the discretion of the Administrator, when determined by the Administrator to be necessary or appropriate to accomplish the purposes of 49 U.S.C. Chapter 301, be made available to the U.S. Department of Justice or an appropriate department or agency of the federal government, acting within the scope of its jurisdiction, provided that each entity shall maintain information as confidential in accordance with the requirements of paragraph (a).

(d) *Redaction.* When disclosing any information under paragraph (a) of this section, the Secretary and any officer or employee of the U.S. Department of Transportation shall take reasonable measures not to reveal the identity of the whistleblower by taking measures not to reveal the whistleblower's name, and redacting the whistleblower's name when information is disclosed under paragraph (a).

(e) *Section 552(b)(3)(B).* The identity of the whistleblower and the information provided to Secretary by the whistleblower shall be considered exempt from disclosure under the provisions of 5 U.S.C. 552 to the fullest extent permitted by law.

(f) *The whistleblower.* The person should self-identify as a whistleblower at the time the person first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. Chapter 301 or a regulation thereunder by submitting a WB–INFO form. If the person is represented by a legal representative, that legal representative should identify the client as a whistleblower at the time the legal representative first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. Chapter 301 or regulation thereunder on behalf of the legal representative's client in the WB–INFO form.

§ 513.6 Prerequisites to the consideration of an award.

(a) Subject to the eligibility requirements described in this part, NHTSA may, but is not required to, authorize payment of an award to one or more persons who:

(1) Provide a voluntary submission to the Agency;

(2) Provide in that submission original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. Chapter 301 or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury; and

(3) The original information provided in that submission leads to the successful resolution of a covered action.

(b) To be eligible, the person must have given the Agency original information in the form and manner that the Agency requires in § 513.4. The Agency may, for good cause, waive this requirement.

§ 513.7 Whistleblowers ineligible for an award.

No award under § 513.10 shall be made:

(a) If the amount of monetary sanctions collected in a covered action does not exceed $1,000,000;

(b) To any whistleblower who is convicted of a criminal violation by a United States federal or state court related to the covered action for which the whistleblower otherwise could receive an award under this part;

(c) To any whistleblower who, acting without direction from an applicable motor vehicle manufacturer, part supplier, or dealership, or agent thereof, deliberately causes or substantially contributes to the alleged violation of a requirement of 49 U.S.C. Chapter 301 or a regulation thereunder;

(d) To any whistleblower who submits information to the Agency that is based on the facts underlying the covered action submitted previously by another whistleblower;

(e) To any whistleblower who fails to provide the original information to the

Agency in the form required by § 513.4 without good cause shown;

(f) To any whistleblower who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(g) If the applicable motor vehicle manufacturer, parts supplier, or dealership has an internal reporting mechanism in place to protect employees from retaliation, to any whistleblower who fails to report or attempt to report the information through such mechanism, unless:

(1) The whistleblower reasonably believed that such an internal report would have resulted in retaliation, notwithstanding 49 U.S.C. 30171(a);

(2) The whistleblower reasonably believed that the information:

(A) was already internally reported;

(B) was already subject to or part of an internal inquiry or investigation; or

(C) was otherwise already known to the motor vehicle manufacturer, part supplier, or dealership; or

(3) The Agency has good cause to waive this requirement.

§ 513.8 Provision of false information.

A person who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18.

§ 513.9 Procedures for making a claim for a whistleblower award.

(a) Whenever any administrative or judicial action, including any related administrative or judicial action, brought by the U.S. Department of Transportation, Agency, or U.S. Department of Justice under 49 U.S.C. Chapter 301 in the aggregate results in collected monetary sanctions exceeding $1,000,000, the Agency will publish on the Agency's website a ''Notice of Covered Action.'' Such Notice will be published subsequent to a final judgment, order, or agreement that alone, or in the aggregate, results in collected monetary sanctions exceeding $1,000,000. A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim, including any attachments, for an award based on that action, or the claim will be barred. The claim is deemed filed on the date that it is received by the Agency.

(b) To file a claim for a whistleblower award, the claimant must complete the WB–AWARD form and submit it no later than ninety (90) calendar days from the date of the Notice of Covered Action to NHTSA's Office of the Chief Counsel by email to *NHTSAWhistleblower@dot.gov* or another method expressly designated on NHTSA's website. If the ninetieth day falls on a weekend or federal holiday, the claim deadline is the next business day.

(c) If the claimant provided original information anonymously pursuant to § 513.4, the claimant must disclose the claimant's identity on the WB–AWARD form and the claimant's identity must be verified in a form and manner that is acceptable to the Agency prior to the authorization of payment of any award to such claimant.

(d) If a claimant filed a claim for a whistleblower award after December 4, 2015 (the date of the enactment of the FAST Act) but before January 16, 2025, the claim submission will be deemed to meet the requirements of § 513.9.

§ 513.10 Award determinations.

(a) Once the time for filing any appeals of the covered action (and all related actions) has expired, or where an appeal has been filed, after all appeals in the covered action and related actions have concluded, and over $1,000,000 in monetary sanctions have been collected, the Agency will evaluate all timely whistleblower award claims submitted on a WB–AWARD form in accordance with the criteria set forth in this part. The Agency may require the claimant to provide additional information relating to the claimant's eligibility for an award or satisfaction of any of the conditions for an award.

(b) The determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Administrator. In determining whether to grant an award to a whistleblower eligible for an award and the amount of an award, the Administrator shall take into consideration, as appropriate:

(1) Whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership;

(2) The significance of the original information provided by the whistleblower to the successful resolution of the covered action;

(3) The degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action;

(4) The statutory purpose of incentivizing whistleblowers; and

(5) The public interest or such additional factors as the Administrator considers relevant.

(c) If the Administrator determines that an award is warranted, the Administrator shall determine the amount of such award or awards to one or more whistleblowers. Whistleblower awards shall be in an aggregate amount equal to—

(1) Not less than 10 percent, in total, of monetary sanctions collected in the covered action; and

(2) Not more than 30 percent, in total, of monetary sanctions collected in the covered action.

(d) Following the Administrator's determination, the Agency will send each whistleblower claimant an Order setting forth whether the claim is granted or denied, and if granted, setting forth the award amount. If the Administrator determines that an award is warranted, in no event will the total amount awarded to all whistleblowers in the aggregate be less than 10 percent or greater than 30 percent of the amount of monetary sanctions collected in the covered action.

(e) No contract with the Agency is necessary for a whistleblower to receive an award.

§ 513.11 Appeals of award determinations.

(a) A claimant may appeal any determination made by the Administrator under § 513.10 to an appropriate court of appeals of the United States not later than 30 days after the Order is issued by the Administrator.

(1) If no claimant files an appeal within 30 days after the Order is issued by the Administrator, no appeals are permitted with respect to the claim that is the subject of the Order.

(2) If any claimant appeals within 30 days after the Order is issued by the Administrator, no payments with respect to the covered action will be made until the appealed award determination action is concluded.

(b) These rules do not entitle claimants to obtain from the Agency any privileged materials such as pre-decisional, attorney-client privileged, attorney work product privileged, or internal deliberative process materials related to the Administrator's Order and/or any privileged material relating to whether, to whom, and in what amount to make a whistleblower award.

(c) The Agency may make redactions to the materials constituting the record as necessary, including but not limited to making redactions to comply with statutory restrictions, the Agency's enforcement and regulatory functions and regulations, and to comply with

requests for confidential treatment from law enforcement, regulatory authorities, or persons submitting information to the Agency pursuant to 49 CFR part 512.

(d) Pursuant to 49 U.S.C. 30172(h)(3), the court shall review the determination made by the Administrator in accordance with 5 U.S.C. 706.

§ 513.12 Procedures applicable to the payment of awards.

(a) A recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction upon which the award is based is collected in the covered action.

(b) Payment of a whistleblower award for a monetary sanction collected in connection with a covered action shall be made within a reasonable time following the later of:

(1) The date on which the monetary sanction totaling over $1,000,000 is collected; or

(2) The completion of the appeals process for all award determination claims arising from the Administrator's Order relating to the covered action.

Appendix A to Part 513—Form WB–INFO

BILLING CODE 4910–59–P

OMB Number: 2127-0767
Exp. [DATE]
NHTSA Form 1684

UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

FORM WB-INFO
WHISTLEBLOWER SUBMISSION

See Privacy Act Statement, Submission Procedures, and Completion Instructions below.

A. INFORMATION ABOUT YOURSELF			
1. Last Name		2. First Name	3. M.I.
4. Street Address			5. Apartment/Unit #
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Telephone	11. Alt. Phone	12. Email Address	13. Preferred Method of Communication
14. Occupation			
15. Current Employer Name			
16. Current Employer Address			
17. Your relationship to the company about whom the concern is raised:			
B. INFORMATION ABOUT THE MOTOR VEHICLE MANUFACTURER, PART SUPPLIER, OR DEALERSHIP ABOUT WHICH THE CONCERN IS RAISED			
1. Company Name			
2. Street Address			

3. City	4. State/Province	5. ZIP/Postal Code	6. Country

7. Do you or did you work for the motor vehicle manufacturer, part supplier or dealership about which the concern is raised?

[] Yes [] No
If yes, please provide dates.
If no, please identify what motor vehicle manufacturer, part supplier or dealership you work or worked for:

8. Does this motor vehicle manufacturer, part supplier or dealership have an internal reporting mechanism?

[] Yes [] No [] I Don't Know

9. If the answer to number 8 above is yes, did you report this issue through the internal reporting mechanism?

[] Yes. Date Reported: _____

[] No. Reason for not reporting_____

C. LEGAL REPRESENTATIVE INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)

1. Legal representative's Name			
2. Firm Name			
3. Street Address			
4. City	5. State/Province	6. ZIP/Postal Code	7. Country
8. Telephone	9. Email address		

D. TELL US ABOUT THE ISSUE INVOLVING THE MOTOR VEHICLE MANUFACTURER, PART SUPPLIER, OR DEALERSHIP	
1. Date(s) of alleged conduct:	2. Is the conduct ongoing? [] Yes [] No [] I Don't Know
3a. Have you or your legal representative had any prior communication with the NHTSA concerning this matter? [] Yes [] No 3b. If yes, provide the name of the NHTSA staff member(s) with whom you or your legal representative communicated and date of such communication:	
4a. Is your allegation related to a potential safety-related defect or a noncompliance with an applicable Federal Motor Vehicle Safety Standard? [] Yes [] No 4b. If yes, please provide a detailed description of allegation and a detailed description of how the allegation affects vehicle/system/component performance and/or compliance. Please include the make, model, model year, part number, component number, etc. if known	
5a. Is your allegation related to any violation or alleged violation of any notification or reporting requirement of the Safety Act? [] Yes [] No 5b. Provide a description of the notification or reporting issue. State in detail all facts pertinent to the alleged violation.	
6. Describe all supporting materials in your possession and the availability and location of any additional supporting materials not in your possession. If necessary, please use additional sheets.	

E. ADDITIONAL INFORMATION (USE ADDITIONAL SHEETS IF NECESSARY)
1. Describe how you learned about or obtained the information that supports your allegations. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible.
2. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity could be reasonably expected to be revealed if the documents or information were disclosed to a third party.
3a. Have you or your legal representative taken any other action regarding the issue or your allegations? [] Yes [] No 3b. If "Yes," please provide details. Use additional sheets, if necessary.
4. Did you acquire the information through a means or manner that has been determined by a United States federal court or a state court to violate applicable federal or state criminal law? [] Yes [] No **If the answer to this question is yes, please contact NHTSA's Office of the Chief Counsel before you submit this form.**
5. Did you acquire the original information that you are submitting to NHTSA solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine? [] Yes [] No **If the answer to this question is yes, please contact NHTSA's Office of the Chief Counsel before you submit this form.**
6. Provide any additional information that you think may be relevant. Attach additional sheets if necessary.

F. PROSPECTIVE WHISTLEBLOWER'S DECLARATION	
I declare under penalty of perjury under the laws of the United States that the information contained herein is true and correct to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the National Highway Traffic Safety Administration, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.	
Print Name	
Signature	Date

G. CERTIFICATION OF LEGAL REPRESENTATIVE OF ANONYMOUS WHISTLEBLOWER (IF APPLICABLE)	
I certify that I have reviewed this form for accuracy and that the information contained herein is true and correct to the best of my knowledge, information and belief. I further certify that I have verified the identity of the person on whose behalf this form is being submitted by viewing the person's valid, unexpired government issued identification (*e.g.*, driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the person, in my records. I further certify that I have obtained the person's non-waivable consent to provide the National Highway Traffic Safety Administration with the original signed WB-INFO form in the event that the National Highway Traffic Safety Administration requests it.	
Print Name of Legal representative and Law Firm, if Applicable	
Signature	Date

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration (NHTSA) inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, or a legal representative acting on such person's behalf, who wishes to provide NHTSA with information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements of 49 U.S.C. Chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury. The information provided will allow the Agency to evaluate the claim and elicit information relevant to whistleblower eligibility requirements. This information may be disclosed to the U.S. Department of Justice or an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction, consistent with the confidentiality requirements set forth in 49 U.S.C. 30172(f). NHTSA may also disclose information that could reasonably be expected to reveal the identity of a whistleblower in certain limited situations, including when the whistleblower provides prior written consent. *Id.*

Furnishing the information contained in this form is voluntary but a decision not to do so will result in you not being eligible for award consideration.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov.

Notice of Whistleblower Rights and Protections

This brief description will provide you with an overview of the whistleblower rights and protections.

Whistleblowers, as that term is defined in 49 U.S.C. 30172(a)(6), have a right to keep their identity confidential in most situations. 49 U.S.C. 30172(f). Generally speaking, any information which reasonably could be expected to reveal the identity of a whistleblower may be disclosed only under limited circumstances. One circumstance where NHTSA could reveal such information is if the whistleblower gives prior written consent. 49 U.S.C. 30172(f)(1)(B).

The Freedom of Information Act (FOIA), 5 U.S.C. 552, gives the public access to records of the Federal Government. Individuals can obtain information from many categories of records of the Government--not just materials that apply to them personally. NHTSA must honor requests under the FOIA, with some exceptions. Information that could reasonably be expected to reveal the identity of a whistleblower is exempted from FOIA disclosure by statute. *See* 49 U.S.C. 30172(f)(3); 5 U.S.C. 552(b)(3)(B).

NHTSA may disclose information that could reasonably be expected to reveal the identity of a whistleblower if it follows the provisions of 5 U.S.C. 552a (the Privacy Act of 1974). 49 U.S.C. 30172(f)(1). The Privacy Act prohibits the disclosure of information from a system of records (where information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) absent the written consent of the subject individual, unless the disclosure is pursuant to one of the twelve statutory conditions.

Furthermore, under 49 U.S.C. 30171, employees providing certain motor vehicle safety information have protections from discrimination. Under 49 U.S.C. 30171(a)(1), a motor vehicle manufacturer, parts supplier or dealership may not discharge an employee or otherwise discriminate against the employee because the employee provided, caused to be provided, or is about to provide (with knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act (49 U.S.C. Chapter 301).

General Information

- To be eligible for an award under NHTSA's whistleblower program, you must first provide us with your information through one of two ways. After completing this WB-INFO form, send it to NHTSA electronically to NHTSAWhistleblower@dot.gov, or submit it by any such method that the Agency may expressly designate on its website (https://www.nhtsa.gov/laws-regulations/whistleblower-program).

- Submitting your information is the first step. If the information you submit leads to the successful resolution of a covered action that in the aggregate results in collected monetary sanctions exceeding $1,000,000, you will have an opportunity at a later date to submit a claim for an award. That is a separate process and is described in our

whistleblower rules at 49 CFR Part 513.

- You have the right to submit information anonymously. If you are submitting information anonymously, you must be represented by a legal representative in this matter and Sections C and G of this form must be completed. Otherwise, you may, but are not required to, have a legal representative. If you are submitting information anonymously, please skip Part I of these instructions and proceed directly to Part II. Otherwise, please begin by following the instructions in Part I.

Part I: Instructions for filers who are disclosing their identity to NHTSA

- You are required to complete Sections A, B, D, E, and F of this form. If you are represented by a legal representative in this matter, you must also complete section C. Specific instructions for answering these questions can be found in Part IV below.
- If you are represented, your legal representative does not need to complete Section G.
- You will need to submit the WB-INFO form in accordance with the Submission Procedures in 49 CFR Part 513.

Part II: Instructions for anonymous filers

- If you are submitting information anonymously, you must be represented by a legal representative on this matter.
- You are required to complete Sections A, B, C, D, E, and F of this form and give the signed original to your legal representative. Specific instructions for answering these questions can be found in Part IV below.
- Your legal representative must retain your signed original WB-INFO form.

Part III. Instructions for legal representatives representing anonymous filers

- Obtain a completed and signed original WB-INFO form, filled out in accordance with the Part II above. You must retain this signed original in your records.
- You must prepare a WB-INFO form, completing Sections B, C, D, and E with your client's information. You must also sign the declaration in Section G.
- You will need to submit the WB-INFO form you completed in accordance with submission procedures in 49 CFR Part 513.

Part IV. Instructions for Completing Form WB-INFO

Section A: Information About Yourself

Questions 1-16: Please provide the following information about yourself:

- Last name, first mame, and middle initial;
- Complete address, including city, state/province, zip/postal code, and country;
- Your telephone number, and if available, an alternate number where you can be reached;
- Your email address (to facilitate communications, you are strongly encouraged to provide your email address);
- Your preferred method of communication;
- Your occupation;
- Your current employer;
- Your current employer's address; and

- Your relationship to the company about whom the concern is raised.

Section B: Information About the Motor Vehicle Manufacturer, Part Supplier, or Dealership About Which the Concern is Raised

Questions 1-7: Please provide the following information about the motor vehicle manufacturer, part supplier, or dealership about which the concern is raised:

- Company name of the motor vehicle manufacturer, part supplier or dealership;
- Complete address of the motor vehicle manufacturer, part supplier, or dealership, including city, state/province, zip/postal code, and country; and
- Complete whether you work or worked for the motor vehicle manufacturer, part supplier, or dealership about whom the concern is raised. If yes, please provide dates that you work or worked for the company. If no, provide the name of the motor vehicle manufacturer, part supplier, or dealership you work or worked for.

Question 8: Please check the correct box stating whether the motor vehicle manufacturer, part supplier, or dealership about which the concern was raised has or had an internal reporting mechanism. The choices are yes, no, and I don't know.

Question 9: If you checked the "yes" box in response to the question of whether the motor vehicle manufacturer, part supplier or dealership had an internal reporting mechanism, please provide the following information:

- If you reported the issue through your company's internal reporting mechanism, check the box "yes" and provide the date that you reported to the internal reporting mechanism.
- If you did not report the issue through your company's internal reporting mechanism, check the box "no" and provide your reason for not reporting to the internal reporting mechanism.

Section C: Legal representative Information. Complete this section only if you are represented by a legal representative in this matter. If you are submitting your information anonymously and you want to be considered for an award under NHTSA's whistleblower program, you must be represented by a legal representative, and this section must be completed.

Questions 1-9: Provide the following information about the legal representative representing you in this matter:

- Legal representative's name;
- The legal representative's firm's name;
- The firm's complete address, including city, state, and zip code;
- Your legal representative's telephone number; and
- Your legal representative's email address.

Section D: Tell Us About the Issue Involving the Motor Vehicle Manufacturer, Part Supplier, or Dealership:

Question 1: Please provide the date that the alleged conduct began.

Question 2: Check the option that best describes whether the alleged conduct is ongoing.

Question 3a: Indicate whether you or your legal representative have had any prior communication with the National Highway Traffic Safety Administration ("NHTSA") concerning this matter.

Question 3b: If you answered "yes" to Question 3a, provide the name of the NHTSA staff member(s) with whom you or your counsel communicated and date of such communication.

Question 4a: Check the option that best describes whether your allegation is related to a potential safety-related defect or noncompliance with an applicable Federal Motor Vehicle Safety Standard (FMVSS).

Question 4b: If you answered "yes" to Question 4a, provide a detailed description of the allegation and a detailed description of how the allegation affects vehicle/system/component performance and/or compliance. Please include the make, model, model year, part number, component number, etc. if known.

Question 5a: Check the option that best describes whether your allegation is related to any violation or alleged violation of any notification or reporting requirement of the Safety Act.

Question 5b: If you answered "yes" to Question 5a, provide a description of the notification or reporting issue. State in detail all facts pertinent to the alleged violation.

Question 6: Describe all supporting materials in your possession and the availability and location of additional supporting materials not in your possession. Attach additional sheets if necessary.

Section E: Additional Information

Question 1: Describe how you learned about or obtained the information that supports your allegations. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.

Question 2: Identify with particularity any documents or information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity could be reasonably expected to be revealed if the documents or information are disclosed to a third party.

Question 3a: Check the option that best describes whether you or your legal representative have taken any other action regarding the issue or your allegations.

Question 3b: If your answer to Question 3a was "Yes," provide details. Use additional sheets if necessary.

Question 4: Check the option that best describes whether you acquired information through a means or manner that has been determined by a United States federal court or a state court to violate applicable federal or state criminal law. The question also contains a statement that if the answer to this question is yes, to please contact NHTSA's Office of the Chief Counsel before you submit this form.

Question 5: Check the option that best describes whether you acquired the original information that you are submitting to NHTSA solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine. The question also contains a statement that if the answer to this question is yes, to please contact NHTSA's Office of the Chief Counsel before you submit this form.

Question 6: Provide any additional information that you think may be relevant. Attach additional sheets if necessary.

Section F: Prospective Whistleblower's Declaration

This is to be completed and signed by the person submitting the information.

Section G: Legal representative Certification

This is to be completed and signed by a legal representative for an anonymous person submitting information. If you have a legal representative and are not submitting this form anonymously, this section does not need to be completed.

Appendix B to Part 513—Form WB–RELEASE

OMB Number: 2127-0767
Exp. [DATE]
NHTSA Form 1684

UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

FORM WB-RELEASE
WHISTLEBLOWER RELEASE FORM

See Notice of Whistleblower Rights and Protections, Privacy Act Statement, Submission Procedures, and Completion Instructions below.

A. Information			
1. Last Name	2. First Name		3. M.I.
4. Street Address			5. Apartment/Unit #
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Name of the motor vehicle manufacturer, part supplier, and/or dealership to which this issue relates:			

B. Release

I understand that in the course of an inquiry or analysis surrounding my allegations, it may become necessary for NHTSA to reveal information that reasonably could be expected to reveal my identity to persons or their counsel or agents at the organization or institution against which such allegations are made or other entities.

☐ **CONSENT** - I have read and understand the above information and authorize NHTSA to reveal any information that could reasonably be expected to reveal my identity to persons at the organization or institution against which my allegations are made, or their agents or counsel, to governmental entities outside the United States and to other persons or entities that NHTSA determines should have access to this information to assist in NHTSA's analysis, inquiry or investigation. **I further understand that I am not required to consent to this release, and do so voluntarily.**

C. Prospective Whistleblower's Signature	
Signature	Date

Notice of Whistleblower Rights and Protections

This brief description will provide you with an overview of the whistleblower rights and protections.

Whistleblowers, as that term is defined in 49 U.S.C. 30172(a)(6), have a right to keep their identity confidential in most situations. 49 U.S.C. 30172(f). Generally speaking, any information which reasonably could be expected to reveal the identity of a whistleblower can be disclosed only under limited circumstances. One circumstance where NHTSA could reveal such information is if the whistleblower gives prior written consent. 49 U.S.C. 30172(f)(1)(B).

The Freedom of Information Act (FOIA), 5 U.S.C. 552, gives the public access to records of the Federal Government. Individuals can obtain information from many categories of records of the Government--not just materials that apply to them personally. NHTSA must honor requests under the FOIA, with some exceptions. Information that could reasonably be expected to reveal the identity of a whistleblower is exempted from FOIA disclosure by statute. *See* 49 U.S.C. 30172(f)(3); 5 U.S.C. 552(b)(3)(B).

NHTSA may disclose information that could reasonably be expected to reveal the identity of a whistleblower if it follows the provisions of 5 U.S.C. 552a (the Privacy Act of 1974). 49 U.S.C. 30172(f)(1). The Privacy Act prohibits the disclosure of information from a system of records (where information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) absent the written consent of the subject individual, unless the disclosure is pursuant to one of twelve statutory conditions.

Furthermore, under 49 U.S.C. 30171, employees providing certain motor vehicle safety information have protections from discrimination. Under 49 U.S.C. 30171(a)(1), a motor vehicle manufacturer, parts supplier or dealership may not discharge an employee or otherwise discriminate against the employee because the employee provided, caused to be provided, or is about to provide (with knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act (49 U.S.C. 30101 et. seq.).

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration ("NHTSA") inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who wishes to provide prior written consent for the Agency to disclose information which could reasonably be expected to reveal their identity. Furnishing this form is voluntary.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email at NHTSAWhistleblower@dot.gov, or a NHTSA attorney with whom you have previously been in contact.

General Information and Submission Procedures

- This form should be used by persons that want to provide prior written consent to the Agency to disclose information which could reasonably be expected to reveal their identity.
- You must sign the WB-RELEASE form as the prospective whistleblower.
- You must submit your form to NHTSA in one of following ways: by emailing it to NHTSAWhistleblower@dot.gov or by any such method that the Agency may expressly designate on its website (https://www.nhtsa.gov/laws-regulations/whistleblower-program).

Instructions for Completing Form WB-RELEASE

Section A: Information

Questions 1-9: Please provide the following information about yourself:

- last name, first name, and middle initial; and
- Complete address, including city, state/province, zip/postal code, and country.

Question 10: Please provide the name of motor vehicle manufacturer, part supplier and/or dealership to which the issue relates.

Section B: Release

Check the box before the word "**CONSENT"** to indicate your consent to allow the Agency to reveal any information that could reasonably be expected to reveal your identity to persons at the organization or institution against which your allegations are made, or their agents or counsel, to governmental entities outside the United States and to other persons or entities that NHTSA determines should have access to this information to assist in NHTSA's analysis, inquiry or investigation.

This section also informs you that you are not required to consent to this release and that you do so voluntarily.

Section C: Prospective Whistleblower's Signature

This section must be signed and dated by the prospective whistleblower.

Appendix C to Part 513—Form WB–AWARD

OMB Number: 2127-0767
Exp. [DATE]

NHTSA Form 1684

UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)

FORM WB-AWARD
WHISTLEBLOWER AWARD APPLICATION

See Privacy Act Statement, Submission Procedures, and Completion Instructions below.

A. CLAIMANT'S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)			
1. Last Name	2. First Name	3. M.I.	
4. Street Address		5. Apartment/Unit #	
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Telephone	11. Alt. Phone	12. Email Address	13. Preferred Method of Communication

B. LEGAL REPRESENTATIVE INFORMATION (IF APPLICABLE – SEE INSTRUCTIONS)			
1. Legal Representative's Name			
2. Firm Name			
3. Street Address			
4. City	5. State/Province	6. ZIP/Postal Code	7. Country
8. Telephone	9. Email Address		

C. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION
1. Did you acquire the original information that you submitted to NHTSA solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine? [] Yes [] No
2. Did you acquire the original information that you submitted to NHTSA by a means or manner that was determined by a United States federal court or state court to violate applicable federal or state criminal law? [] Yes [] No
3. Are you currently a subject or target of a criminal investigation in the United States, or have you been convicted of a criminal violation by a United States federal or state court, in connection with the allegations or conduct that you submitted to the NHTSA? [] Yes [] No
4. Indicate whether any of the factors in 49 CFR 513.7 apply, which could make you ineligible for an award. [] Yes [] No
5. If you answered "Yes" to any of Questions above, provide details. Use additional sheets, if necessary.

D. ISSUE DETAILS
1. How did you submit original information to NHTSA? [] By email to NHTSAWhistleblower@dot.gov [] Other: _____
2. Date(s) that you submitted the information:
3. Name of motor vehicle manufacturer, part supplier and/or dealership to which this issue relates

E. NOTICE OF COVERED ACTION AND RELATED ACTION
1. Date of relevant Notice of Covered Action
2. Notice Number
3. Case Name
4. Case Number
5. Date of relevant Notice of Covered Action for any related action
6. Notice Number of Related Action
7. Case Name of Related Action
8. Case Number of Related Action

F. AWARD JUSTIFICATION

Explain the basis for your belief that you should receive an award in connection with your submission of information to NHTSA. Specifically address how you believe you voluntarily provided NHTSA with original information that led to the successful resolution of a covered action. Provide any information that you think may be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. 30172 and 49 CFR Part 513. Use additional sheets, if necessary.

G. CLAIMANT'S DECLARATION	
I declare under penalty of perjury under the laws of the United States that the information contained herein is true and correct to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information or other interactions with the National Highway Traffic Safety Administration, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.	
Print Name	
Signature	Date

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration ("NHTSA") inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, or a legal representative acting on such person's behalf, who wishes to apply for a whistleblower award for providing original information that led to the successful resolution of a covered action. The information provided will allow the Agency to evaluate the claim and elicit information relevant to whistleblower eligibility requirements. Furnishing the information is voluntary but a decision not to do so will result in you not being eligible for award consideration.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov or a NHTSA attorney with whom you have previously been in contact.

General Information

- This form should be used by persons making a claim for a whistleblower award in connection with information provided to NHTSA. To be eligible for an award, you must meet all the requirements set forth in 49 U.S.C. 30172 and the rules thereunder, as

contained in 49 CFR Part 513.

- You must sign the WB-AWARD form as the claimant. If you provided your information to NHTSA anonymously, you must now disclose your identity on this form and your identity must be verified in a form and a manner that is acceptable to the Agency prior to the payment of any award.

- Your WB-AWARD form, and any attachments thereto, must be received by NHTSA within ninety (90) days of the date of the Notice of Covered Action to which the claim relates.

- You must submit your form to NHTSA in one of following two ways: emailing it to NHTSAWhistleblower@dot.gov or by any such method that the Agency may expressly designate on its website (https://www.nhtsa.gov/laws-regulations/whistleblower-program).

Instructions for Completing Form WB-AWARD

Section A: Claimant's Information

Questions 1-13: Please provide the following information about yourself:

- Last name, first name, and middle initial;
- Your complete address, including city, state/province, zip/postal code, and country;
- Your telephone number, and if available, an alternate number where you can be reached;
- Your email address (to facilitate communications, you are strongly encouraged to provide your email address); and
- Your preferred method of communication.

Section B: Legal representative Information. Complete this section only if you are represented by a legal representative in this matter. If you are not represented by a legal representative in this matter, leave this Section blank.

Questions 1-9: Provide the following information about the legal representative representing you in this matter:

- Your legal representative's name;
- The firm name;
- Your legal representative's complete address, including city, state, and zip code;
- Your legal representative's telephone number; and
- Your legal representative's email address.

Section C: Eligibility Requirements and Other Information

Question 1: Indicate whether you acquired the original information that you submitted to NHTSA solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine.

Question 2: Indicate whether you acquired the original information that you submitted to NHTSA by a means or manner that was determined by a United States federal court or state court to violate applicable federal or state criminal law.

Question 3: Indicate whether you are currently a subject or target of a criminal investigation in the United States or whether you have been convicted of a criminal violation by a United States federal or state court in connection with the allegations or conduct that you submitted to NHTSA.

Question 4: Indicate whether any of the factors in 49 CFR 513.7 apply, which could make you ineligible for an award.

Question 5: If you answered "yes" to Questions 1, 2, 3, or 4 above, provide details. Use additional sheets if necessary.

Section D: Whistleblower Information Details

Questions 1-3: Provide the following information about the whistleblower information that you submitted to NHTSA:

- Select the method by which you submitted original information to NHTSA. If you selected "Other" describe how you submitted the information;
- Provide the date that you submitted the original information to NHTSA; and
- Provide the name of the motor vehicle manufacturer, part supplier, and/or dealership to which the issue relates.

Section E: Notice of Covered Action

The process for making a claim for a whistleblower award begins with the publication of a "Notice of Covered Action" on NHTSA's website. This notice is published whenever a judicial or administrative action brought under 49 U.S.C. Chapter 301 by NHTSA, the U.S. Department of Transportation, or the U.S. Department of Justice results in collected monetary sanctions exceeding $1,000,000.

A Notice of Covered Action is published on NHTSA's website subsequent to the entry of a final judgment, order or agreement that by itself, or collectively with other judgments, orders or agreements previously entered in the action, results in collected monetary sanctions exceeding the $1,000,000 threshold.

Question 1: Provide the date of the Notice of Covered action to which this claim relates.

Question 2: Provide the notice number of the Notice of Covered Action.

Question 3: Provide the case name referenced in the Notice of Covered Action.

Question 4: Provide the case number referenced in the Notice of Covered Action.

Question 5: Provide the date of the relevant Notice of Covered Action for any related action.

Question 6: Provide the notice number of the related action.

Question 7: Provide the case name of the related action.

Question 8: Provide the case number of the related action.

Section F: Award Justification

Use this section to explain the basis for your belief that you should be granted an award in connection with your submission of information to NHTSA. Specifically address how you

believe you voluntarily provided NHTSA with original information that led to the successful resolution of a covered action. Provide any information that you think may be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. 30172 and 49 CFR Part 513.

49 U.S.C. 30172(c) provides that in determining an award made under 49 U.S.C. 30172(b), the Secretary shall take into consideration: (i) if appropriate, whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership; (ii) the significance of the original information provided by the whistleblower to the successful resolution of the covered action; (iii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action; and (iv) such additional factors as the Secretary considers relevant.

Section G: Claimant's Declaration

This section must be completed and signed by the claimant.

Issued under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2024–29268 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 241112–0291; RTID 0648–XR126]

Endangered and Threatened Wildlife and Plants: Reclassification of Pillar Coral (*Dendrogyra cylindrus*) From Threatened to Endangered

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is changing the status of pillar coral (*Dendrogyra cylindrus*) from threatened to endangered on the Federal List of Threatened and Endangered Species. We have considered the 5-year review of the status of *D. cylindrus,* expert reviewer comments, and public comments submitted on the proposed rule. Based on this information, we have determined that *D. cylindrus* is in danger of extinction throughout all or a significant portion of its range. Thus, we are changing the status of *D. cylindrus* from threatened to endangered under the Endangered Species Act (ESA) of 1973.

DATES: This final rule is effective on February 18, 2025.

ADDRESSES: Public comments that were submitted on the proposed rule to change the status of *D. cylindrus* are available at: *https://www.regulations.gov* identified by docket number NOAA–NMFS–2023–0002. A list of references cited in the final rule and other supporting materials are available at: *https://www.fisheries.noaa.gov/species/pillar-coral/conservation-management,* or by submitting a request to the National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division, 263 13th Avenue South, St. Petersburg, Florida 33701.

FOR FURTHER INFORMATION CONTACT: Alison Moulding, 727–551–5607, *alison.moulding@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2014, we published a final rule listing *D. cylindrus,* along with 4 other Caribbean coral species and 15 Indo-Pacific coral species, as threatened under the ESA (79 FR 53851, September 10, 2014). In early 2021, we announced a 5-year review of 7 threatened Caribbean coral species, including *D. cylindrus* (86 FR 1091, January 7, 2021) to determine whether the listing classification of these species was still accurate. Based on the findings of the 5-year review (NMFS, 2022), we published a proposed rule to change the status of *D. cylindrus* from threatened to endangered (88 FR 59494, August 29, 2023). We solicited peer review of the scientific information contained in the proposed rule from three independent experts from the scientific community who have expertise in *D. cylindrus* biology, ecology, conservation, and threats to the species, and we incorporated their comments prior to publication of the proposed rule. We requested comments on the proposed rule from the public during a 60-day comment period and held a virtual public hearing on September 26, 2023, at which we also accepted public comments.

In this final rule, we are reclassifying *D. cylindrus* from a threatened species to an endangered species under the ESA. We have determined that *D. cylindrus* is in danger of extinction throughout all or a significant portion of its range. This final determination is based on the information in the 5-year review, from expert peer reviewers, and from public comments, which together comprise the best scientific and commercial data available.

Listing Determinations Under the ESA

Section 3 of the ESA defines an endangered species as any species that is in danger of extinction throughout all or a significant portion of its range and a threatened species as one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). Thus, an ''endangered species'' is one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction but is likely to become so within the foreseeable future (*i.e.,* at a later time). So, the primary statutory difference between a threatened and endangered species is the timing of when a species is in danger of extinction, either presently (endangered) or not presently but within the foreseeable future (threatened).

The statute requires us to determine whether a species is threatened or endangered as a result of any of the factors listed in section 4(a)(1) of the ESA: (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. Changes to a listed species' status must be determined on the basis of these factors using solely the best scientific and commercial data available (16 U.S.C. 1533(c)(2)(B)). Implementing regulations in 50 CFR 424.11(b) reiterate the requirement that changes in a species' classifications must be based solely on the best available scientific and commercial information regarding a species' status.

Public Comments and Our Responses

Public comments were accepted by standard mail, email, during the public hearing, and through the Federal eRulemaking portal. We received 17 public comments on the proposed rule from individuals, government agencies, and conservation organizations. Of these, 14 comments were supportive of the proposed reclassification of *D. cylindrus,* 1 comment was against reclassification, and 2 comments were neutral and asked for clarification on the effects of the reclassification. Most of the supportive comments expressed general support for the proposed rule but did not include substantive content. Several comments presented general information on threats or information that was already considered in the proposed rule. We received 3 comments that provided documentation that reinforced the information on demographic factors and threats considered in the proposed rule, including population declines and susceptibility to climate-induced ocean warming, ocean acidification, nutrients, sedimentation, and disease. We also received 1 comment that is outside the scope of the proposed rule that stated that we need to provide support for the increased administrative burden on state and Federal agencies that results from listing and changing the status of species under the ESA, and that we need to increase the Federal funds designated for the management and recovery of ESA-listed species. All substantive public comments on the proposed rule to reclassify *D. cylindrus* as endangered are addressed in the following summary. We have categorized comments by topic, and, where appropriate, we have combined similar comments from multiple people or groups and addressed them together.

Demographics and Threats

Comment 1: Three commenters provided additional references (Jones *et al.,* 2021, Alvarez-Filip *et al.,* 2022) that addressed population decline of *D. cylindrus* from disease and were not included in the proposed rule or 5-year review (NMFS, 2022).

Response: We thank these commenters for the submission of additional data to inform the status of the species and this final rule. Jones *et al.* (2021) suggests that thermal stress in 2014 and 2015 exacerbated underlying disease and resulted in a disease outbreak that led to the extirpation of *D. cylindrus* in southeast Florida. Alvarez-Filip *et al.* (2022), reported that greater than 80 percent of *D. cylindrus* surveyed in Mexico suffered mortality or were infected by disease between 2018 and 2020. Population declines in Florida and Mexico and the threats of disease and ocean warming were considered in the proposed rule as factors leading to the extinction risk of *D. cylindrus.* The additional references are consistent with the information we considered in the proposed rule. Thus, these comments support our conclusions regarding the threats of ocean warming and disease and provide additional support for our conclusion that *D. cylindrus* meets the definition of an endangered species. These references were incorporated into the final rule.

Comment 2: We received several comments and references about the threat of climate change and its negative effects on corals that increase the extinction risk for *D. cylindrus.*

Response: We agree that the effects of climate change are contributing to the risk of extinction of *D. cylindrus.* In the original listing rule (79 FR 53851, September 10, 2014), we identified factors acting directly as stressors on *D. cylindrus* (*e.g.,* elevated ocean temperature and sedimentation) as distinct from the sources responsible for those factors (*e.g.,* climate change and land management practices) and evaluated the impact each threat has on the species' extinction risk. The susceptibility of *D. cylindrus* to ocean warming and ocean acidification was addressed in the 5-year review (NMFS, 2022) and in the proposed reclassification rule (88 FR 59494, August 29, 2023). The additional references are consistent with the information we considered in the proposed rule. Thus, these comments support our conclusions regarding the threats of ocean warming and ocean acidification and provide additional support for our conclusion that *D. cylindrus* meets the definition of an endangered species. Because stressors stemming from climate change are already identified as threats contributing to the extinction risk for *D. cylindrus,* no changes were made to the final rule in response to these comments.

Comment 3: We received a comment that human activities such as coastal development, dredging, wastewater disposal, and shipping have contributed to the susceptibility of *D. cylindrus* to stony coral tissue loss disease (SCTLD).

Response: In the original listing rule (79 FR 53851, September 10, 2014), we identified factors acting directly as stressors on *D. cylindrus* (*e.g.,* elevated ocean temperature and sedimentation) as distinct from the sources responsible for those factors (*e.g.,* climate change and land management practices) and evaluated the impact each threat has on the species' extinction risk. Although causative factors of coral disease remain poorly understood, we agree that the presence of stressors such as sedimentation and nutrient enrichment from human activities like coastal development and wastewater disposal can increase the susceptibility of corals to disease. A diseased state results from a complex interplay of factors including the cause or agent (*e.g.,* pathogen, environmental toxicant), the host, and the environment. The interaction of disease and other stressors was discussed in the original listing rule (79 FR 53851, September 10, 2014), and the susceptibility of *D. cylindrus* to disease, sedimentation, and nutrients was considered in the 5-year review (NMFS, 2022) and in the proposed reclassification rule (88 FR 59494, August 29, 2023). The public comments are consistent with the information we considered in the proposed rule. Thus, these comments support our conclusions regarding the threats of disease, nutrient enrichment, and sedimentation and provide additional support for our conclusion that *D. cylindrus* meets the definition of an endangered species.

Analyses

Comment 4: We received a comment that there is no benefit to changing the status of *D. cylindrus* to endangered since the ESA has no mechanism of protecting against the major threats of climate change and disease.

Response: Under section 4(b) of the ESA, we are required to base listing decisions solely on the best scientific and commercial data available after conducting a review of the status of the

species and after taking into account efforts to protect the species (16 U.S.C. 1533(b)(1)(A)). We may determine a species is threatened or endangered 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. When making a listing or reclassification determination, we cannot consider impacts that may stem from the listing determination itself, and we cannot ignore threats for which there are no existing mitigation mechanisms (16 U.S.C. 1533(b), 50 CFR 424.11(b)). After considering the best scientific and commercial information available on status of the species and taking into account efforts being made to protect the species, we conclude that *D. cylindrus* is in danger of extinction and should be listed as endangered under the ESA.

Comment 5: We received a comment stating that there is a need for expanded and purposeful opportunities for states and territories with coral reefs in their jurisdiction to comment on, participate in, and lead efforts before the Federal government makes any decisions under the ESA, such as listing or reclassifying a species, and requesting that states and territories be consulted on which data are used as the best available science for informing decisions.

Response: The ESA and the implementing regulations describe the process NMFS must use when listing species under the ESA (16 U.S.C. 1533; 50 CFR part 424). This process includes giving actual notice of the proposed listing regulation to the state agency in each state in which the species is believed to occur and to each county or equivalent jurisdiction in which the species is believed to occur and inviting them to comment on the proposal (16 U.S.C. 1533(b)(5)(A)(ii); 50 CFR 424.16(c)(1)(ii)). In accordance with this requirement, we notified the states, counties, and territories where *D. cylindrus* is known to occur when we published the proposed rule to reclassify *D. cylindrus* as endangered. We accepted comments by standard mail, email, during the public hearing on September 26, 2023, and through the Federal eRulemaking portal. This allowed those government agencies the opportunity to participate in the decision to reclassify *D. cylindrus* as endangered, including providing input on the best scientific and commercial data available. We considered all relevant comments within the scope of this rulemaking received during the comment period when making this final determination to reclassify *D. cylindrus* from threatened to endangered.

We also note that we worked cooperatively with states and territories to obtain unpublished coral monitoring data to inform the 5-year review of ESA-listed Caribbean coral species. We considered the information in the 5-year review, including the population data obtained from the states and territories, when making the determination that *D. cylindrus* met the definition of an endangered species. By seeking unpublished monitoring data from states and territories, giving notice of the proposed listing regulation to states and territories in which the species occurs, and considering comments from states and territories, we provided opportunities for these groups to participate in the decision to change the status of *D. cylindrus* from threatened to endangered.

Comment 6: We received a comment that we should incorporate data from mesophotic reefs, which may serve as thermal refugia for shallow water species, into factors considered for listing and reclassifying species under the ESA.

Response: For the proposed rule to reclassify *D. cylindrus* to endangered, we evaluated the best scientific and commercial data available. As stated in the proposed rule, *D. cylindrus* inhabits most reef environments in depths between 1 and 25 meters (m) and is most common in reef environments in water depths between 5 and 15 m. We have found no evidence that *D. cylindrus* occurs at mesophotic depths (30–150 m), and the commenter did not provide any information to the contrary. Therefore, we did not consider the role of mesophotic reefs as a factor in the decision to change the status of *D. cylindrus* from threatened to endangered.

Effects of the Reclassification

Comment 7: We received a comment asking if exporting dead samples of *D. cylindrus* for scientific research would require an ESA section 10(a)(1)(A) permit if they were collected prior to reclassification.

Response: If samples of *D. cylindrus* (alive, dead, or preserved) were collected prior to reclassification, an ESA section 10(a)(1)(A) permit is not needed to import or export them; rather, NMFS can issue a Letter of Determination to authorize import and export, provided certain criteria are met. In addition, *D. cylindrus* is listed on Appendix II of the Convention on International Trade in Endangered Species (CITES), and, therefore, a CITES export permit issued by the exporting country would be required. For more information on Letters of Determination, see *https://www.fisheries.noaa.gov/permit/letter-determination-protected-species-parts-and-products.* For more information on CITES, see *https://www.fws.gov/international-affairs/cites.*

Comment 8: We received a comment that it was unclear whether transport and transfer of captive *D. cylindrus* to another holding facility within the United States was a violation of the ESA section 9(a)(1) prohibitions and would require an ESA section 10(a)(1)(A) permit.

Response: Transportation of *D. cylindrus* or *D. cylindrus* parts within the United States is not a violation of the ESA section 9 prohibitions, provided that the corals were legally obtained and that the transport is not in the course of a commercial activity. Transfer of *D. cylindrus* between U.S. facilities is, therefore, allowable without the need for a NMFS ESA section 10(a)(1)(A) permit. Documentation of the transfer to a different holding facility should be maintained.

Comment 9: We received 2 comments that reclassification of *D. cylindrus* to endangered would have negative impacts on conservation efforts like restoration and rescue and cause delays, obstacles, and a greater administrative burden on restoration practitioners and state and territorial jurisdictions who would need to apply for an ESA section 10(a)(1)(A) permit. One of the commenters asked that NMFS minimize and streamline ESA section 10(a)(1)(A) permitting as much as possible to eliminate barriers to restoration and recovery. They recommended issuing a single permit to a state agency to authorize multiple practitioners to carry out restoration activities and developing a centralized database with online reporting that provides data access to all managing agencies.

Response: As explained in the response to Comment 4, listing and reclassification determinations must be made solely on the basis of the best available scientific and commercial information regarding a species' status and without reference to possible economic or other impacts of such determinations (16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b)). Thus, when making a listing or reclassification determination, we cannot consider whether the listing or reclassification will increase the administrative burden associated with applying for ESA permits for conservation activities.

NMFS is committed to making ESA section 10(a)(1)(A) permitting as clear and streamlined as possible within the bounds of the law. We will streamline the permitting process through several mechanisms, including issuing permits valid for up to 10 years, conducting programmatic consultation under section 7 of the ESA to eliminate the need for individual consultation on each permit application, and reprogramming the online application system, Authorizations and Permits for Protected Species (APPS) (see *https://apps.nmfs.noaa.gov*) to accept applications for *D. cylindrus.* ESA section 10 Permit Holders can submit annual reports of their permitted activities in APPS. While these currently are not publically accessible in APPS, copies of submitted reports may be requested from the NMFS Office of Protected Resources, Permits and Conservation Division under the Freedom of Information Act. We are further recommending that individuals and groups that are working on the same project, at the same institution, or under the same funding to consider applying together to work under a single permit. These options allow for less frequent and reduced numbers of permit applications and can reduce processing times.

In anticipation of a final determination to reclassify *D. cylindrus* to endangered, we held webinars on April 16 and 19, 2024, to present information on the effects of a reclassification and the ESA section 10(a)(1)(A) permitting process. We announced the webinars to researchers and restoration practitioners known to work with *D. cylindrus* and agencies that issue research and restoration permits. We also announced these webinars on a coral listserv (*i.e.,* Coral List) to reach a broader audience. During the webinars, we included information on what activities would need an ESA permit should *D. cylindrus* be reclassified as endangered and how and when to submit an ESA permit application. We encouraged attendees to apply for an ESA permit before a final determination was made so that conservation activities could continue uninterrupted if a final rule went into effect. Additional permitting guidance can be found on our website at: *https://www.fisheries.noaa.gov/species/pillar-coral/conservation-management.*

Summary of Changes From the Proposed Listing Rule

We did not receive, nor did we find, data or references that presented substantial new information that would cause us to change our proposed listing determination. We received several sources of new information (see Comment 1), which provided population data that supported the information considered in the 5-year review report (NMFS, 2022) and proposed rule. We also received additional information related to threats (*e.g.,* ocean warming, ocean acidification, disease, sedimentation, and nutrient enrichment) which was consistent with or reinforced information in the 5-year review and proposed rule (see Comments 2 and 3). Therefore, while the new information contributed to our overall understanding of population dynamics and threats, it did not alter the outcome of the extinction risk analysis nor our interpretation of risk factors across the range of the species. Therefore, in this rule, we are finalizing the change in the classification of *D. cylindrus* from a threatened species to an endangered species under the ESA.

In response to questions received about ESA permits, we have added additional information to the Effects of Listing section of this final rule to clarify that a Letter of Determination is needed for import or export of *D. cylindrus* or *D. cylindrus* parts in possession before the reclassification takes effect. In consultation with our ESA permitting division, we also provide further clarification in the Effects of Listing section with respect to prohibited and non-prohibited activities. These clarifications include rephrasing some of the descriptions to focus on the activity rather than the impact to the species, rearranging or splitting the activities in the list to differentiate prohibited activities that would need an ESA section 10(a)(1)(A) permit from non-prohibited activities, and adding more detail to describe the particular prohibited and non-prohibited activities.

Assessment of Species Status

In the proposed rule to reclassify *D. cylindrus* from threatened to endangered under the ESA, we outlined the rationale for our determination. Below, we summarize our evaluation and final determination. We relied on the best scientific and commercial data available including the information in the 5-year review and the public comments received. Please refer to the proposed rule for additional information (88 FR 59494, August 29, 2023).

Species Abundance, Trends, and Distribution

Dendrogyra cylindrus is a colonial coral that can form large pillars (up to 3 m) upon an encrusting base. It is a gonochoric (*i.e.,* separate sexes), broadcast spawning coral species, but some hermaphroditic colonies have been observed (Kabay, 2016; Neely *et al.,* 2018; Neely *et al.,* 2020a; O'Neil *et al.,* 2021). Spawning observations have also suggested that eggs may be fertilized within female colonies prior to release (Marhaver *et al.,* 2015). It has a relatively low annual egg production and low sexual recruitment, with no reports of observed sexual recruitment in the wild. *Dendrogyra cylindrus* can also reproduce asexually through fragmentation and reattachment to the substrate.

Dendrogyra cylindrus is present in the western Atlantic and throughout the greater Caribbean. It is absent in the Flower Garden Banks National Marine Sanctuary in the Gulf of Mexico and from the southwest Gulf of Mexico. It inhabits most reef environments in water depths ranging from 1 to 25 m and is most common in reef environments in water depths between 5 and 15 m. It has a naturally uncommon to rare occurrence, appearing as scattered, isolated colonies. It is sometimes found in highly clonal aggregations, likely resulting from fragmentation events (Chan *et al.,* 2019).

Population trend information indicates the species has continued to decline since being listed in 2014. Surveys of *D. cylindrus* conducted in Colombia in 2012 show a reduced spatial extent, loss of colonies, and higher prevalence and amount of partial mortality 10 years after initial surveys (Bernal-Sotelo *et al.,* 2019). Multiple thermal bleaching events in 2014 and 2015 and ongoing and emerging disease events (SCTLD) since 2014 have caused near extirpation of *D. cylindrus* in Florida (Jones *et al.,* 2021; Lewis, 2018; Lewis *et al.,* 2017; Neely *et al.,* 2021a; Neely, 2024), and *D. cylindrus* is now considered functionally extinct (*i.e.,* the population is no longer viable and will not be able to sustain itself) along the Florida reef tract (Neely *et al.,* 2021a).

Although quantitative population trend data are only available from Florida and Colombia, we assumed the species is in decline throughout most of its range based on the evidence from these regions (northern and southwestern portions of its range) and the more widespread evidence of severe disease impacts from SCTLD, which has spread from Florida to the eastern, western, and southern Caribbean (see *https://www.agrra.org/coral-disease-outbreak/* for a map of confirmed sightings of SCTLD in the greater Caribbean). *Dendrogyra cylindrus* is highly susceptible to SCTLD (Florida Coral Disease Response Research &

Epidemiology Team, 2018) and has been reported with high prevalence and confirmed or presumed mortality in multiple islands and countries across the Caribbean including the Bahamas (Dahlgren *et al.,* 2021), Mexico (Alvarez-Filip *et al.,* 2019; Alvarez-Filip *et al.,* 2022; Estrada-Saldivar *et al.,* 2021), and the U.S. Virgin Islands (Brandt *et al.,* 2021; Costa *et al.,* 2021). We assumed SCTLD will eventually reach all areas of the range of *D. cylindrus* based on its previous spread and the fact that it is waterborne (Aeby *et al.,* 2019).

Summary of Factors Affecting the Species

Dendrogyra cylindrus was listed as threatened in 2014 because of its susceptibility to and impacts from multiple threats, including ocean warming (ESA Factor E), disease (C), acidification (E), nutrient enrichment (A and E), sedimentation (A and E), trophic effects of fishing (A), and inadequate existing regulatory mechanisms to address global threats (D). As indicated in the proposed rule to reclassify *D. cylindrus* as endangered, these threats continue to contribute to the species' extinction risk. Several commenters provided additional information related to these threats, including ocean warming, ocean acidification, nutrient enrichment, sedimentation, and disease, which was consistent with the proposed rule and did not change our conclusions about any of these threats. Since its listing as threatened, *D. cylindrus* has declined in abundance and distribution in multiple locations with the most severe decline in the northern portions of its range. These declines are predominantly due to the effects of SCTLD, which emerged as a devastating and deadly new disease since the listing (Precht *et al.,* 2016). Though the occurrence of *D. cylindrus* has historically been uncommon to rare, the species has become even rarer as a result of SCTLD. Furthermore, no observed sexual recruitment has been reported in the wild, and we concluded that reductions in population size and local extirpations will further inhibit the species' ability to persist and replenish diminished populations through asexual and sexual reproduction.

Conservation Measures

We evaluated conservation measures used to protect *D. cylindrus,* including treatment of individual colonies for SCTLD (Miller *et al.,* 2020; Neely *et al.,* 2020b; Neely *et al.,* 2021c; O'Neil *et al.,* 2018; Shilling *et al.,* 2021; Walker *et al.* 2021), ex situ banking (Kabay, 2016; Neely *et al.,* 2021b; Neely, 2024; O'Neil *et al.,* 2021), and propagation of *D. cylindrus* for future restoration (Marhaver *et al.,* 2015; Neely, 2019; Neely *et al.,* 2020a; O'Neil *et al.,* 2021; Villalpando *et al.,* 2021). We concluded that the conservation actions would benefit the species but would not affect the status of *D. cylindrus* to the point at which listing as an endangered species is not warranted. Further, because current conservation actions do not directly address the root causes of threats such as disease, we concluded that they are insufficient to protect the species from the risk of extinction. See the proposed rule for additional discussion of conservation measures (88 FR 59497, August 29, 2023).

Final Listing Determination

We reviewed the best scientific and commercial information available on the status of *D. cylindrus,* threats to the species, and conservation measures. Based on consideration of this information and public comments, we determine that *D. cylindrus* meets the definition of an endangered species. We find that *D. cylindrus* is in danger of extinction throughout all or a significant portion of its range. *Dendrogyra cylindrus* is susceptible to multiple threats including ocean warming (ESA Factor E), disease (C), acidification (E), nutrient enrichment (A and E), sedimentation (A and E), trophic effects of fishing (A), and inadequate existing regulatory mechanisms to address global threats (D). In addition, the following characteristics contribute to its risk of extinction:

(1) It is geographically located in the highly disturbed Caribbean where localized human impacts are high and threats are predicted to increase. A range constrained to this particular geographic area that is likely to experience severe and increasing threats indicates that a high proportion of the population of this species is likely to be exposed to those threats;

(2) It has an uncommon to rare occurrence throughout its range, which heightens the potential effect of localized mortality events and leaves the species vulnerable to becoming of such low abundance that it may be at risk from depensatory processes, environmental stochasticity, or catastrophic events;

(3) Its low sexual recruitment limits its capacity for recovery from threat-induced mortality events throughout its range; and

(4) It has experienced population declines, primarily due to SCTLD, in multiple locations throughout its range, including severe declines in the northern portion of its range, which has resulted in diminished distribution and local extirpation.

The combination of these characteristics indicates that *D. cylindrus* is in danger of extinction throughout its range and warrants listing as an endangered species due to factors A, C, D, and E.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery plans (16 U.S.C. 1553(f)), critical habitat designations, Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions of certain acts under the ESA (16 U.S.C. 1538). Because *D. cylindrus* was previously listed as threatened, Federal agency consultation requirements are already in effect, and a recovery outline has been developed to guide recovery until a full recovery plan has been finalized. Critical habitat has also been designated for *D. cylindrus* (88 FR 54026, August 9, 2023).

All of the prohibitions in section 9(a)(1) of the ESA automatically apply to fish and wildlife listed as endangered species. Section 9(a)(1) includes prohibitions on importing, exporting, engaging in foreign or interstate commerce, or ''taking'' of the species. ''Take'' is defined under the ESA as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or an attempt to engage in any such conduct'' (16 U.S.C. 1532(19)). These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. Upon the effective date of this rule to reclassify *D. cylindrus* as endangered, section 9 of the ESA would expressly prohibit the following:

(1) Taking of *D. cylindrus* within the United States or its territorial sea, or upon the high seas;

(2) Possessing, selling, delivering, carrying, transporting, or shipping any *D. cylindrus* that was illegally taken;

(3) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any *D. cylindrus* in the course of a commercial activity;

(4) Selling or offering *D. cylindrus* for sale in interstate or foreign commerce; or

(5) Importing *D. cylindrus* into, or exporting *D. cylindrus* from, the United States.

On July 1, 1994, NMFS and the U.S. Fish and Wildlife Service (FWS) published a policy statement (59 FR 34272) that requires the agencies to identify, to the extent known at the time a species is listed, those activities that

would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. Based on available information, we conclude the following categories of activities are likely to meet the ESA's definition of ''take'' and, therefore, result in a violation of the ESA section 9 prohibitions. We emphasize that whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. The mere fact that an activity may fall within one of these categories does not mean that the specific activity will cause a violation. Further, an activity not listed may in fact result in a violation. Activities that are likely to result in a violation of section 9 prohibitions include, but are not limited to, the following:

(1) Collection of *D. cylindrus,* including colonies, fragments, tissue samples, and gametes, from the wild;

(2) Research outside the bounds of normal animal husbandry that results in harm (*e.g.,* injuring or killing) to captive *D. cylindrus;*

(3) Removing, relocating, or reattaching *D. cylindrus* in the wild;

(4) Damaging, poisoning, contaminating, or killing *D. cylindrus;*

(5) Scientific research activities on wild *D. cylindrus* involving the manipulation of the coral or its environment;

(6) Release of captive *D. cylindrus* into the wild. Release of a captive coral could have the potential to injure or kill the coral or to affect wild populations of *D. cylindrus* through introduction of disease;

(7) Habitat alternation, such as removal of substrate or alteration of water quality, resulting in injury or death of *D. cylindrus;*

(8) Discharging pollutants (*e.g.,* toxic chemicals, radioactive matter, carcinogens, mutagens, teratogens) or organic nutrient-laden water, including sewage water, into *D. cylindrus* habitat to an extent that harms or kills *D. cylindrus;*

(9) Shoreline and riparian disturbances (whether in the riverine, estuarine, marine, or floodplain environment) that may harm or kill *D. cylindrus,* for instance, by disrupting or preventing the reproduction, settlement, reattachment, development, or normal physiology of *D. cylindrus.* Such disturbances could include land development, run-off, dredging, and disposal activities that result in direct deposition of sediment on *D. cylindrus,* shading, or covering of substrate for fragment reattachment or larval settlement; and

(10) Activities that modify water chemistry in *D. cylindrus* habitat to an extent that disrupts or prevents the reproduction, development, or normal physiology of *D. cylindrus.*

Some categories of activities are unlikely to constitute a violation of the section 9 prohibitions. Again, we emphasize that whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. The mere fact that an activity may fall within one of these categories does not mean that the specific activity will not cause a violation. We consider the following activities to be ones that are unlikely to violate the ESA section 9 prohibitions:

(1) Taking of wild *D. cylindrus,* including collection of colonies, fragments, tissue samples, and gametes, authorized by an ESA section 10(a)(1)(A) permit issued by NMFS for the purposes of scientific research or the enhancement of propagation or survival of the species and carried out in accordance with the terms and conditions of the permit;

(2) Incidental taking of *D. cylindrus* resulting from federally authorized, funded, or conducted projects for which consultation under section 7 of the ESA has been completed and when the project is conducted in accordance with any terms and conditions set forth by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Import or export of *D. cylindrus* or *D. cylindrus* parts authorized by a CITES permit and an ESA section 10(a)(1)(A) permit (or Letter of Determination for *D. cylindrus* or *D. cylindrus* parts in possession before the reclassification takes effect) issued by NMFS;

(4) Continued possession of *D. cylindrus* parts or live *D. cylindrus* that were in captivity at the time of up-listing to an endangered species, including any progeny produced from captive corals after the rule is finalized, so long as the prohibitions of ESA section 9(a)(1) are not violated. Corals are considered to be in captivity if they are maintained in a controlled environment or under human care in ocean-based coral nurseries. Individuals or organizations should be able to provide evidence that *D. cylindrus* or *D. cylindrus* parts were in captivity prior to its listing as an endangered species. We suggest such individuals or organizations submit information to us on the *D. cylindrus* in their possession (*e.g.,* type, number, size, source, date of acquisition), to establish their claim of possession (see **FOR FURTHER INFORMATION CONTACT**);

(5) Providing normal care for captive *D. cylindrus.* Captive corals are still protected under the ESA and may not be killed or injured or otherwise harmed and must receive proper care. Normal husbandry care of captive corals includes handling, cleaning, maintaining water quality within an acceptable range, extracting tissue samples for the purposes of diagnosis of condition or genetics, treating or preventing spread of maladies such as disease or parasites using established methods proven to be effective, propagating corals by sexual or asexual means (*i.e.,* fragmenting larger coral colonies into smaller colonies to increase the number of corals, maintain corals of manageable size, or accelerate their growth rate) within the bounds of normal husbandry practices, attaching to artificial surfaces, and removing dead skeleton. Scientific studies that are intended to improve the husbandry practices of caring for captive *D. cylindrus,* where there is a reasonable expectation that they would not cause harm to *D. cylindrus* (*e.g.,* trialing new food supplements, comparing different lighting systems, testing different attachment substrates), would not require an ESA permit;

(6) Interstate and intrastate transportation of legally obtained captive *D. cylindrus* and *D. cylindrus* parts provided it is not in the course of a commercial activity. If captive corals or *D. cylindrus* parts are to be moved to a different holding location, records documenting transfer of corals should be maintained;

(7) Stabilization of loose or unattached *D. cylindrus,* including fragments, in the wild by experienced individuals and as authorized by an ESA section 10(a)(1)(A) permit issued by NMFS;

(8) Relocation of wild *D. cylindrus* from one site to another under the authorization of an ESA section 10(a)(1)(A) permit issued by NMFS;

(9) Use of captive *D. cylindrus* for scientific studies under the authorization of an ESA Section 10(a)(1)(A) permit issued by NMFS. Scientific studies that have the potential to injure or harm captive *D. cylindrus* (*e.g.,* altered temperature outside of ideal range, exposure to contaminants, potentially harmful chemicals, or disease, introduction of coral predators) require an ESA section 10(a)(1)(A) permit;

(10) Research activities that involve collection or manipulation of *D. cylindrus* in the wild under the

authorization of an ESA section 10(a)(1)(A) permit;

(11) Observational studies on *D. cylindrus* in the wild that do not involve collection or manipulation of *D. cylindrus* such as benthic surveys, photographs, and videos;

(12) Release of captive *D. cylindrus* into the wild, as authorized by an ESA section 10(a)(1)(A) permit issued by NMFS; and

(13) Treatment of wild *D. cylindrus* for disease by experienced individuals using non-experimental methods proven to be effective and as authorized by state and territorial permits.

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Peer Review Bulletin (the Bulletin), implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal Government's scientific information and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the Bulletin, the proposed rule was subject to peer review. A peer review plan was posted on the NOAA peer review agenda and can be found at: *https://www.noaa.gov/information-technology/endangered-species-act-proposed-rule-for-pillar-coral-dendrogyra-cylindrus-id432.* Our synthesis and assessment of scientific information supporting the proposed action was peer reviewed via individual letters soliciting the expert opinions of three qualified specialists selected from the academic and scientific community. The charge to the peer reviewers and the peer review report have been placed in the administrative record and posted on the agency's peer review agenda. In meeting the OMB Peer Review Bulletin requirements, we have also satisfied the requirements of the 1994 joint U.S. Fish and Wildlife Service/NMFS peer review policy (59 FR 34270; July 1, 1994).

References

A complete list of the references used in this rule is available online (see *www.fisheries.noaa.gov/species/pillar-coral#conservation-management*) and upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

National Environmental Policy Act

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,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

Regulatory Flexibility 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.

Executive Order 12866

This final rule is exempt from review under Executive Order 12866.

Paperwork Reduction Act

This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132

In accordance with Executive Order 13132, agencies are required to take into account any federalism impacts of regulations under development. This Executive order includes specific consultation directives for situations where a regulation will preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final listing determination. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the proposed rule was provided to the relevant agencies in each state in which the subject species occurs, and these agencies were invited to comment. Their comments were addressed with other comments in the Public Comments and Our Responses section.

Executive Order 12898

Executive Order 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionately high and adverse effect on the health or environment of minority and low-income populations. The purpose of this rule is to update the classification of a coral species that is already protected under the ESA. This rule will serve to continue the protection and conservation of this coral species and is expected to promote a healthy ecosystem. Therefore, this rule is not expected to have a disproportionately high or adverse effect on the health or the environment of minority populations or low-income populations.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 12, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reason set out in the preamble, we amend 50 CFR parts 223 and 224 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

§ 223.102 [Amended]

■ 2. In § 223.102, amend the table in paragraph (e), under the subheading ''Corals,'' by removing the entry for ''Coral, pillar.''

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation of part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. In § 224.101, amend the table in paragraph (h), under the subheading ''Corals,'' by adding an entry for ''Coral, pillar'' in alphabetical order by common name 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			
*	*	*	* * *		*
Corals					
*	*	*	* * *		*
Coral, pillar	*Dendrogyra cylindrus*	Entire species	[INSERT **FEDERAL REGISTER** CITATION], December 17, 2024.	226.230	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).

* * * * *

[FR Doc. 2024–29082 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 241209–0318]

RIN 0648–BM26

Confidentiality of Information

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing this final rule to revise existing regulations pertaining to confidentiality of information requirements under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA). This rule updates the regulations consistent with the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) and 1996 Sustainable Fisheries Act (SFA) and amendments to the High Seas Driftnet Fishing Moratorium Protection Act (FMPA) under the 2015 Illegal, Unreported and Unregulated Fishing Enforcement Act (IUU Fishing Act). The final rule provides other revisions to address issues that concern NMFS' internal control procedures (ICPs) for management of MSA confidentiality of information.

DATES: Effective January 16, 2025.

ADDRESSES: A plain language summary of this rule is available at: *https://www.regulations.gov/docket/NOAA-HQ-2023-0146.*

Electronic Access: Information relevant to this proposed rule, which includes a final regulatory impact review and a Regulatory Flexibility Act certification, is accessible via the internet at: *https://www.regulations.gov/docket/NOAA-HQ-2023-0146/.*

FOR FURTHER INFORMATION CONTACT: Karl Moline, 301–427–8225, or at NMFS, Operations, Management, & Information Division F/ST3, Ste. 12300, 1315 East West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: Section 402(b) of the MSA provides that ''any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act,'' 16 U.S.C. 1881a(b)(1), and ''[a]ny observer information,'' *id.* 1881a(b)(2), ''shall be confidential and shall not be disclosed'' except pursuant to certain exceptions. Section 402(b)(3) requires that the Secretary ''shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under [the MSA],'' but the Secretary may release confidential information ''in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information.'' *Id.* 1881a(b)(3). NMFS regulations implementing MSA section 402(b) are at 50 CFR part 600, subpart E, and there are confidentiality related definitions and references at 50 CFR 600.10 and 600.130. NMFS published a proposed rule in the **Federal Register** on March 11, 2024 (89 FR 17358). Comments were invited and accepted through April 25, 2024. NMFS received 36 individual comments, including 1 letter that contained 5,040 signatures. NMFS responses are addressed in the Response to Comments section below. After considering public comments submitted for the proposed rule, NMFS is implementing the final rule with some changes.

Background

The agency last revised the confidentiality regulations in February 1998 (63 FR 7075, February 12, 1998). A number of statutory changes have been enacted since 1998, and this rule provides important updates and clarifications to the confidentiality regulations to reflect those statutory changes. The 2006 MSRA (Pub. L. 109–479) made three major changes to the confidentiality provisions at MSA section 402(b). First, the MSRA added a provision specifying that observer information (defined at 16 U.S.C. 1802(32)) shall be confidential and shall not be disclosed except pursuant to specified exceptions. 16 U.S.C. 1881a(b)(2). One such exception at MSA section 402(b)(1)(F) authorizes release of confidential information based on written authorization from the person submitting such information. *Id.* 1881a(b)(1)(F). The proposed rule distinguished between observer information that is collected onboard a vessel for scientific and management purposes and information collected for administration of the observer program and allowed a vessel permit holder to execute a written authorization only for the first category of information. See 89 FR 17358, 17364 (March 11, 2024) (explaining basis for proposed rule approach, which retains current agency practice).

Second, the MSRA added a new exception that authorizes the Secretary to disclose confidential information when such information is required to be submitted to the Secretary for any determination under a limited access program (LAP). 16 U.S.C. 1881a(b)(1)(G). The proposed rule included a definition of ''determination'' and defines ''limited access program'' consistent with how ''catch share'' is defined under NOAA's Catch Share Policy (available at *http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf*). The proposed rule explained that the exception could

apply, regardless of whether NMFS has made a LAP determination as long as there are sufficient facts showing that the information was submitted to NMFS for it to make a determination under a LAP. For example, prior landings information would be releasable if a fishery management council (Council) has submitted a fishery management plan (FMP) or amendment for a LAP for secretarial approval and NMFS issues a **Federal Register** notice stating that it will use prior landings data for initial allocation determinations under the proposed LAP. The proposed rule also notes that information submitted under a non-LAP fishery may later be relevant for determinations regarding privileges, if the fishery transitions to a LAP. NMFS proposed that information previously submitted under a non-LAP that the agency uses or intends to use for determinations under a newly established LAP may fall within the scope of the LAP exception. See 89 FR 17363–17364 (March 11, 2024, explaining proposed rule approach to LAP exception).

Third, the MSRA expanded the confidentiality provision to include information submitted to a State fishery management agency or a marine fisheries commission in compliance with a requirement or regulation under the Act. Prior to the MSRA, the 1996 SFA (Pub. L. 104–297) had expanded the confidentiality provision to apply to information submitted in compliance with ''any requirement or regulation'' under the Act and also revised MSA section 402(b) to refer to ''information'' instead of ''statistics.''

In addition, as discussed in the preamble to the proposed rule, the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (IUU Fishing Act), Public Law 114–81 101(b) (Nov. 5, 2015), amended the FMPA to include provisions at 16 U.S.C. 1826i and 1826g related to MSA confidential information. 89 FR at 17359. NMFS implements and administers the FMPA through authority delegated from the Secretary. Under section 1826i(b)(1), the Secretary is authorized to disclose information, as necessary and appropriate, including information collected under joint authority of the MSA and another statute that implements an international fishery agreement, such as the Atlantic Tunas Convention Act (ATCA) of 1975, *Id.* 971 *et seq.,* to a Federal or State government agency, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement, if certain conditions are satisfied. Such information may be vessel-specific. One condition for release of the otherwise confidential information is ''such government, organization, or arrangement . . . has policies and procedures to protect such information from unintended or unauthorized disclosure.'' *Id.* 1826i(b)(1). Section 1826g(d)(2) authorizes disclosure to the same entities and foreign governments, subject to the same condition regarding policies and procedure to protect against unauthorized disclosure. In addition, section 1826g(d)(2) also requires that disclosures be necessary for one of the compliance or enforcement purposes enumerated under subparagraph (A)(ii). *Id.* 1826g(d)(2)(A)(i)–(ii). For purposes of the FMPA disclosure provisions, the term ''international fishery agreement'' has the same meaning as ''international fishery management agreement'' as set forth in 50 CFR 300.201.

Both 1826i(b)(2) and 1826g(d)(2)(B) provide that, with respect to the FMPA, the confidentiality requirements of the MSA are not applicable for obligations of the United States to share information under a Regional Fishery Management Organization (RFMO) to which the United States is a member, or to information collected by NMFS regarding foreign fishing vessels.

In response to comments on the proposed rule, NMFS has revised the final rule to more simply and closely track the FMPA provisions. See response to Comment 20 below. In addition, some RFMO implementing statutes have confidentiality provisions, *e.g.,* Western and Central Pacific Fisheries Convention (WCPFC) Implementation Act, 16 U.S.C. 6905(d). NMFS initiated this rulemaking based on the statutory changes described in the Background section of the proposed rule and this final rule and a general need to reorganize and clarify the scope of applicability of the confidentiality regulations.

NMFS proposed to revise § 600.405 to clarify that regulations under subpart E apply to confidential information that is under NMFS' custody and control. NMFS further explained that it treats information as subject to its custody and control when it physically obtains the information (*see* 16 U.S.C. 1881a(b) (providing for confidentiality of information ''submitted'' to the Secretary in compliance with MSA requirements)). In the case of electronically submitted information, NMFS has custody and control when the information enters a NMFS Federal Information Security Modernization Act (FISMA) domain (which is a collection of devices, applications, software and information technology assets that serve a coordinated purpose or mission, and have a common enforced boundary with enforced or inherited security and privacy controls). Thus, while the MSA confidentiality requirements apply to information submitted to a State fishery management agency or a marine fisheries commission, these regulations would not apply to such information as it is outside of NMFS' physical possession. Protection of that information would be addressed through an agreement with a State or a marine fisheries commission as provided for under § 600.410(c).

The 1998 regulations discuss the generic application of ''safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures'' to confidential data. 50 CFR 600.410(a)(3). Currently those procedures are set forth in a NOAA Administrative Order (NAO 216–100). As discussed in the preamble of the proposed rule, NOAA intends to replace NAO 216–100 with updated internal control procedures. Accordingly, NMFS revised existing § 600.410 to clarify the need to establish these internal control procedures and to outline certain topics that should be included in the updated procedures (*See* § 600.410(b)).

This final rule includes the following elements:

(1) A clarification that the regulations under 50 CFR part 600, subpart E, apply to information under NMFS' custody and control (§ 600.405).

(2) Deletion of references to ''statistics'' in 50 CFR part 600, subpart E, and the definitions and Council sections (§§ 600.10 and 600.130), and other technical, non-substantive changes for the sake of clarity.

(3) Revised definition of ''Aggregate or summary form'' based on MSA section 402(b)(3), including adding a reference to ''business of any person'' (§ 600.10).

(4) New definitions of ''Business of any person'', ''Confidential information'', ''Electronic Monitoring Service Provider'', ''Information sharing obligation of a Regional Fishery Management Organization (RFMO)'', ''Observer provider'', and ''Regional Fishery Management Organization'' (§ 600.10).

(5) Deletion of existing text at § 600.410(a)(2) regarding NMFS removing, after receipt, ''identifying particulars'' from statistics.

(6) Procedures regarding State or marine fisheries commission information collection agreements (§ 600.410(c)) and observer providers

and electronic monitoring service providers (§ 600.410(d)).

(7) Addition of text from 16 U.S.C. 1881a(b)(1)(I) on disclosure of information to ''Federal agencies, to the extent necessary and appropriate, to administer Federal programs established to combat illegal, unreported, or unregulated fishing or forced labor (as such terms are defined in section 11329 of the Don Young Coast Guard Authorization Act of 2022 [16 U.S.C. 1885a note]), which shall not include an authorization for such agencies to release data to the public unless such release is related to enforcement.'' (§ 600.415(a)(3)).

(8) New procedures regarding access to confidential information by Federal employees when in support of homeland and national security activities (§ 600.415(a)(2)), State and marine fisheries commission employees (§ 600.415(b)), and State enforcement employees responsible for FMP enforcement (§ 600.415(c)).

(9) Revised procedures regarding access to confidential information by Council members (§ 600.415(d)(2)).

(10) New procedures regarding access to confidential information by a Council's scientific and statistical committee, advisory panels and contractors (§ 600.415(d)(3)–(5)).

(11) A provision on making vessel monitoring system information directly available to State enforcement employees and state management agencies, as provided under section 311(i) of the Magnuson-Stevens Act (§ 600.415(e)).

(12) A provision on disclosure of information to specified governmental and intergovernmental entities pursuant to the FMPA, 16 U.S.C. 1826i and 1826g (§ 600.415(f)).

(13) Provisions on disclosure of observer information for proceedings to adjudicate observer certifications and as authorized by regulations implementing recommendations in an FMP prepared by the North Pacific Fishery Management Council (§ 600.420(a)–(b)).

(14) LAP exception to confidentiality requirements and related new definitions for LAP and ''determination'' (§ 600.420(c)).

(15) Clarification of the court order exception (§ 600.420(d)).

(16) Provision regarding disclosure of information for enforcement of the MSA or when necessary for enforcement of any state living marine resource law, if that state has a Joint Enforcement Agreement that is in effect (§ 600.420(e)).

(17) Procedures for written authorization for release of confidential information, including observer information (§ 600.420(f));

(18) Provision that NMFS may disclose in any aggregate or summary form information that is required to be maintained as confidential under the regulation (§ 600.425)

(19) Prohibition on disclosing confidential information without authorization (§ 600.725(y)).

Response to Comments

NMFS published its proposed rule on March 11, 2024, (89 FR 17358) and accepted public comments for 45 days, closing on April 25, 2024. NMFS received a total of 36 comments. Below, NMFS summarizes and responds to all comments received. Comments are grouped by subject matter (*e.g., '45-day Comment Period'*) with similar comments summarized under a comment number (*e.g., 'Comment 1'* summarizes all comments received regarding the 45-day comment period).

45-Day Comment Period

Comment 1: Many commenters said that the 45-day comment period was too short and that NMFS should reissue the proposed rule with additional time for comment. Some commenters stated that, concurrent with additional time for comment, NMFS should engage the public on the rulemaking and specific issues such as electronic monitoring policies, data ownership and management, and public access. One commenter said that NMFS should at minimum conduct another rulemaking for the data aggregation and summarization procedures referenced under § 600.410(b). Two commenters recommended reinitiating this rulemaking and that NMFS should engage the public through an Advanced Notice of Proposed Rulemaking (ANPR).

Response: The 45-day comment period provided sufficient time for submission of a wide range of material issues and concerns. During that period no new information was presented that would warrant additional time for review and comment or for reissuance of the rule for another notice and comment period. After finalization of this rulemaking, NMFS will develop an approach to engage with the public on improvements to the procedures for aggregation and summarization of confidential information referenced under § 600.410(b) for the maintenance of and access to confidential information. NMFS typically engages the public through ANPRs in order to scope issues, identify possible alternatives, and generally gather information that it may need to develop a proposed rule. An ANPR was not necessary here given NMFS' experience in administering confidentiality requirements since enactment of the 1976 Fishery Conservation and Management Act (precursor to the MSA) and the 2012 MSA confidentiality proposed rule and public comments received during an almost 5-month comment period. See 82 FR 4278 (January 13, 2017) (describing and withdrawing 2012 proposed rule). If experience implementing these regulations identifies the need for additional procedures to preserve the confidentiality of information, the agency will consider an ANPR along with other options to engage the public in development of those procedures.

Open Government and Transparency

Comment 2: Some commenters opposed the proposed rule stating that it limited public access to information without a statutory mandate and is inconsistent with the Administration's Open Government Policy.

Response: NMFS disagrees. First, the MSA mandates the confidentiality of any information that is submitted to the Secretary, a State fishery management agency, or a marine fisheries commission and any observer information in compliance with a requirement or regulation under the MSA. 16 U.S.C. 1881a(b)(1) and (b)(2). The limitations on public access to information under this rule are consistent with that mandate and MSA section 402(b)(3) which directs the Secretary to promulgate, by regulation, such procedures as may be necessary to preserve the confidentiality of information. Second, this rule advances open government and transparency by providing a framework that allows for access to, or public disclosure of, confidential information when authorized by law.

Unauthorized Use/Disclosure Prohibition

Comment 3: Some commenters opposed the prohibition on unauthorized use or disclosure of confidential information in § 600.725 stating that it would discourage legitimate disclosures of confidential information. These commenters recommended that NMFS instead emphasize training on the handling of confidential information. A commenter asked that NMFS clarify whether NMFS would be responsible for enforcing the proposed prohibition.

Response: This prohibition reflects the confidentiality requirements of MSA 402(b) and section 307(1)(A) which provides that it is unlawful for any person to violate any provision of the

Act. Since 1996, NMFS' regulations for preservation of MSA confidential information under subpart E have included this prohibition and during that time NMFS employees and other individuals authorized to access confidential information have been required to sign a statement that they acknowledge the prohibition on unauthorized disclosure of confidential information and the potential for civil or criminal prosecution for any violation of that prohibition. The proposed prohibition, therefore, represents applicable law and existing policy. Based on its long history of successfully operating under this prohibition, NMFS has no basis to believe that the prohibition would discourage or create concerns within NMFS on legitimate access to and disclosure of confidential information. Enforcement will be the responsibility of NMFS' Office of Law Enforcement with support from other governmental entities.

Development of Internal Control Procedures

Comment 4: Many commenters requested that NMFS clarify how it will develop ICPs referenced under § 600.410(b) and how the ICPs would apply to the collection and maintenance of, access to, and release of any confidential information. Some commenters stated that they could not assess the rule without further information on the ICPs and how they would be developed. One commenter asserted that the rule's approach to development of the ICPs is not consistent with principles of transparency and inclusion provided in NMFS' Equity and Environmental Justice Strategy and NOAA's Data Strategic Action Plan. Commenters generally requested that NMFS provide a transparent and inclusive process with meaningful opportunities for public engagement in the development of ICPs.

Response: The ICPs are internal agency procedures intended to guide the handling of confidential information under the MSA. Because the current ICPs inform NMFS' internal administrative processes, they are included in a 1994 NOAA Administrative Order (NAO 216–100) and are not set forth in the Code of Federal Regulations. However, as noted in the preambleto the proposed rule, NOAA intends to replace NAO 216–100 with updated ICPs. NMFS is committed to an open, equitable, and transparent public engagement process in the development of the ICPs through appropriate means and methods and consistent with legal requirements. The extent and manner of public engagement will vary depending on the subject matter.

Recognizing that ICPs have been a part of the confidentiality regulations since 1998 in some fashion, this rule reiterates the need to establish ICPs. While the requirement to establish and maintain ICPs is part of this rulemaking, the rulemaking does not dictate the specific substance of those ICPs. As guidance rather than regulatory mandate, ICPs will be developed subsequent to the issuance of the final rule and reflect its requirements related to the preservation of confidential information. Developing internal administrative procedures that could change as a result of this rulemaking would not be efficient. When NMFS develops substantive ICPs, it plans to engage the public through webinars, workshops, and/or other forms and methods for obtaining public comment.

Comment 5: Some commenters stated that the ICPs are substantive rules of general applicability that must be promulgated through rulemaking in order to comply with the Administrative Procedure Act (APA). Other commenters also said that NMFS must promulgate ICPs by regulation in order to comply with MSA 402(b)(3), 16 U.S.C. 1881a(b)(3). One commenter viewed notice-and-comment rulemaking as appropriate for development of procedures for release of confidential information in aggregate or summary form while other procedures that only apply to NMFS's internal handling of confidential information could be developed through a non-rulemaking process.

Response: ICPs have been part of the confidentiality regulations since 1998. As stated above, they currently exist in NAO 216–100, have not been codified in the Code of Federal Regulations, and were not promulgated through notice and comment rulemaking in the **Federal Register**. These ICPs constitute a practice or procedure relating to agency management and are therefore not subject to notice and comment procedures under the APA, 5 U.S.C 553(a)(2). Nevertheless, NMFS intends to evaluate each ICP individually and determine the appropriate process for public engagement and development. NMFS anticipates that most, if not all, will constitute a practice or procedure relating to agency management and as such not subject to APA notice and comment procedures. However, NMFS will conduct further rulemaking, if necessary, and/or may choose to make draft ICPs available for public comment.

Under MSA 402(b)(3), the Secretary, through NMFS, is directed to ''prescribe such procedures [by regulation] as may be necessary to preserve the confidentiality of information . . .'' NMFS therefore has discretion to determine which procedures are necessary for the protection of confidential information and which, therefore, must be done through rulemaking. This final rule prescribes all such procedures.

In contrast, the ICPs contained in NAO 216–100 consist of procedures for agency management that can be addressed through non-regulatory methods. ICPs provide additional guidance on the application of the regulatory requirements in specific cases, but they are not themselves regulatory. As such, the subject matter to be addressed through ICPs, such as standardized agreements for sharing information, do not constitute procedures that are necessary for preserving confidentiality. However, if NMFS determines that a specific ICP should have regulatory effect, NMFS will promulgate that ICP through appropriate rulemaking. Until ICPs are developed and finalized, it will continue to apply the provisions of NAO 216–100 except those that are in conflict with applicable law. For example, NMFS will not apply Section 6.04.a.1(d) of NAO 216–100, which provides that observer data collected under the MSA are not confidential. This provision is in direct conflict with MSA 402(b)(2), 16 U.S.C 1881a(b)(2).

Comment 6: A commenter expressed concern that NMFS would release confidential information under the Freedom of Information Act (FOIA) even if prohibited under ICPs because procedures not completed through regulations lack the force of law.

Response: NMFS agrees that non-regulatory ICPs lack the force of law. Any such ICPs will not address or apply to whether confidential information may be released under FOIA. Rather, as stated in the preamble of the proposed rule, NMFS applies MSA section 402(b)(3) as the basis for FOIA Exemption Three, mandatory withholding authority.

Comment 7: A commenter stated that it is unclear how national policies developed through the ICPs will interact with regional practices and implementation plans.

Response: As required under § 600.410(b), NMFS intends to update the current ICPs set forth in NAO 216–100. As with the current ICPs, these updated ICPs will be intended to provide national-level guidance on the application of these regulations for the maintenance of and access to any confidential information. Regions may develop additional ICPs that address

specific issues with their region's data collection programs and/or fisheries for management of confidential information. Any such regional ICPs must be consistent with statutory and regulatory requirements and should also be consistent with the national ICPs.

Protection of Confidential Information Collected and/or Processed by Observer Information Services

Observer Providers

Comment 8: One commenter requested that NMFS revise the definition of ''observer provider'' because observer providers do not collect observer data. The commenter further requested that NMFS explain the use of the term ''observer information'' rather than ''observer data'' and whether using the term ''observer information'' will affect public access to information that is collected by observers.

Response: The definition of observer provider is clear that an observer provider does not itself collect observer information but rather collects that information through the placement of observers on certain platforms or in certain facilities. This rule defines ''observer provider'' as ''any person that collects observer information by placement of observers on or in fishing vessels, shoreside processors, or stationary floating processors under the MSA or as part of a cooperative research initiative.'' The MSA defines ''person'' to include ''any corporation, partnership, association, or other entity.'' 16 U.S.C. 1802(36). The MSA defines ''observer information,'' *id.* 1802(32), and specifically references that term in the MSA's confidentiality requirements at section 402(b), *id.* 1881a(b)(2). Accordingly, it is appropriate to use the term ''observer information'' for this rule rather than ''observer data,'' which is neither defined in the MSA nor referenced in the MSA's confidentiality requirements.

Electronic Monitoring (EM) Service Providers

Comment 9: One commenter recommended that NMFS expand the definition of ''EM Service Provider'' to include EM providers that contract directly with fishery participants or their representatives. Otherwise, portions of EM data that are collected and maintained by EM service providers may not be protected by NMFS even though that information is subject to the MSA confidentiality requirements. The commenter requested that NMFS maintain the confidentiality of EM information in the same way that it protects information collected by human observers. The commenter stated that protection of information will incentivize further participation in and development of EM. An additional commenter stated that NMFS should describe how the revised MSA confidentiality regulations will affect its policy directives on EM. The commenter stated that NMFS should initiate a distinct rulemaking for maintaining the confidentiality of EM information and engage the public on access to that information.

Response: Under this final rule, an EM service provider is defined to include such providers that contract directly with a vessel to manage information that is collected by an EM system required under MSA regulations or a permit. However, agency access, maintenance, and release responsibilities under this final rule apply only to information that is under NMFS' custody and control. As explained in the Background section of this final rule and the proposed rule (89 FR at 17361–62), NMFS treats information as subject to its custody and control when it physically obtains the information (*see* 16 U.S.C. 1881a(b) (providing for confidentiality of information ''submitted'' to the Secretary in compliance with MSA requirements)). Information that is maintained by an EM service provider under contract with a fishing vessel is not under NMFS' custody and control. Therefore, the access, maintenance, and release responsibilities of this final rule do not apply to that information.

As explained in the preamble to the proposed rule, because EM information is a form of observer information under the MSA, it is considered confidential under the MSA. NMFS expects an EM service provider to have a means to protect a vessel owner's EM information that is subject to the MSA's broader statutory prohibition on the release of observer information. See Information Law Application for Data and Supporting Guidance in Electronic Monitoring Programs For Federally Managed U.S. Fisheries 04–115–04, available at *https://media.fisheries.noaa.gov/dam-migration/04-115.pdf.* Regulatory programs that establish EM programs should require that third parties have a means to protect EM data, whether through FMP implementing regulations, a service provider approval process, or other applicable procedure. *Id.*

NMFS has a different approach for information collected by human observers because MSA 402(b)(2)(C) provides for limited dissemination of confidential information between observers, observer providers, and NMFS pursuant to a confidentiality agreement that prohibits other types of dissemination. See 89 FR at 17361 (proposed rule discussion). To comply with MSA section 402(b)(2)(C), NMFS must effectuate the MSA confidentiality requirements for human observer information including information collected by observers employed by an observer provider that is under contract with a fishing vessel, but a similar provision does not exist for electronic monitoring information not under NMFS' control. Thus, the final rule takes a different approach for observer providers than for EM service providers that are under contract with a fishing vessel.

For these reasons, NMFS is finalizing its proposed definition of an Electronic Monitoring Service Provider with no changes. NMFS' existing policy directives on EM information and these regulations are sufficient to guide the management of confidential information collected through EM systems, and a specific rulemaking on such issues is unwarranted.

NMFS has made one edit to the definition of ''observer information'' to insert statutory text that was inadvertently left out. The MSA defines ''observer information'' to include EM information collected pursuant to an authorization by the Secretary or ''as part of a cooperative research initiative.'' 16 U.S.C. 1802(36). The final rule adds the cooperative research text. Lastly, because this final rule does not apply to confidential information maintained by EM service providers, it does not affect NMFS' policy directive 04–115–03 which provides guidance on how long privately contracted EM service providers should retain EM information.

Comment 10: A commenter expressed concern that the proposed definition of ''confidential information'' did not cover certain categories of EM data or portions of the ''chain of custody,'' *i.e.,* the handling of EM data before review and data extraction.

Response: This final rule defines ''confidential information'' consistent with the MSA, which requires the confidentiality of any observer information with some exceptions. 16 U.S.C. 1881a(b)(2). Under the MSA, observer information is defined to include any information collected by an EM system. Accordingly, under this final rule, all categories of EM data that are collected by an EM system constitute confidential information. Information regarding ''chain of custody,'' or the handling of EM data before review and data extraction, does not fall under the MSA definition of

observer information. Therefore, such information would not be considered confidential information for MSA purposes unless it is required to be submitted to NMFS in compliance with a regulation under the Act.

Comment 11: One commenter requested an assessment of the impacts of the proposed rule on the implementation of a new reporting requirement for electronic logbooks (ELBs) for commercial fisheries in the Gulf of Mexico. The commenter stated that this assessment is important to ensure that implementation of the ELBs for commercial fisheries is not delayed.

Response 11: Confidentiality of information requirements under the MSA and this final rule may apply to information that a person submits through ELBs or other electronic devices but not the devices themselves. Agency access, maintenance, and release responsibilities under this rule apply only to information that is under NMFS' custody and control, *i.e.,* when it enters a NMFS FISMA domain. *See* Background section above for FISMA explanation. As such, this final rule does not have an impact on the implementation of new reporting requirements for ELBs in the Gulf of Mexico, and therefore, no assessment of the impacts of this rule on reporting requirements for ELBs was conducted.

Comment 12: A commenter stated that NMFS should improve the efficacy of its confidentiality agreement protocols by requiring EM providers to disclose their artificial intelligence and machine learning technologies.

Response: The commenter did not indicate why or how disclosure of an EM provider's artificial intelligence and machine learning technologies to NMFS would improve the efficacy of the confidentiality agreement protocols. These final regulations require that a confidentiality agreement between NMFS and EM service providers that are providing services to NMFS under a contract, or performing functions that require the handling of confidential information under a NMFS financial assistance award, specify the procedures that the provider will apply to protect confidential information from public disclosure; and also require that the EM service provider, and each of its employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of this information under 16 U.S.C. 1858. NMFS believes that these procedures are sufficient to address any potential information security issues that may arise with respect to any technologies employed by an EM service provider for the processing of EM data.

Comment 13: A commenter requested that NMFS revise the proposed rule to clarify if all information collected by the EM systems that are required under the MSA or other authorities will be treated as confidential information.

Response: As stated above, any information collected by an EM system that is required under the MSA is subject to the Act's confidentiality requirements. Agency access, maintenance, and release responsibilities under this rule apply only to information that is under NMFS' custody and control, which occurs when NMFS physically obtains the information, or it enters an NMFS FISMA domain. *See* Background section above for FISMA explanation. The response to Comment 9 explains NMFS' approach to EM information maintained by an EM service provider under contract with a fishing vessel. Responses to Comments 14 and 24 describe agreements with states or Marine Fisheries Commissions for the collection of confidential information. Neither MSA confidentiality requirements nor this rule apply to information that is collected by an EM system that may be required under other authorities. Whether NMFS must protect from disclosure information collected by an EM system required under an authority other than the MSA depends on the authority at issue.

Comment 14: Commenters requested that NMFS clarify what constitutes ''authority comparable to the MSA'' for purposes of an agreement with a state that allows for collection of confidential information. Commenters also asked how NMFS will determine that a State will ''exercise such authority'' and what happens if it does not.

Response: Pursuant to § 600.410(c)(1), NMFS will assess whether a State has legal authority to protect confidential information from disclosure in the same manner that NMFS can protect such information from public disclosure under the MSA. NMFS will rely on the respective State's assurances to determine whether a State will exercise such authority. Should a State not exercise its authority to protect confidential information, NMFS may rescind the collection agreement. NMFS intends to develop ICPs to guide the development of confidentiality agreements with States and commissions that are authorized to collect confidential information.

Scope of Subpart E Regulations

Comment 15: A commenter said that proposed § 600.405 would narrow the scope of information that would be subject to the regulations compared to current regulations. Some commenters requested that NMFS clarify whether confidentiality protections would apply to information collected by NMFS under a fishery management plan (FMP) that was not implemented under the MSA.

Response: Proposed § 600.405 was not intended to narrow the scope of information subject to MSA confidentiality requirements (16 U.S.C. 1881a(b)); the section refers to a definition of confidential information (§ 600.10) that is consistent with 16 U.S.C. 1881a(b). After reviewing public comment, NMFS is clarifying § 600.405. Final § 600.405 continues to state that the regulations apply to confidential information as defined in § 600.10 with an additional explanation that agency access, maintenance, and release responsibilities apply only to confidential information under NMFS' custody and control. As explained in the Background section of this final rule and the proposed rule (89 FR at 17361–62), NMFS treats information as subject to its custody and control when it physically obtains the information (*see* 16 U.S.C. 1881a(b) (providing for confidentiality of information ''submitted'' to the Secretary in compliance with MSA requirements)).

With regard to the relevant FMP, the proposed rule stated that the MSA confidentiality requirements apply to information that a person submits in compliance with an FMP that is implemented under the MSA and any observer information collected under the Act. In some cases, FMP information collection and/or monitoring requirements are implemented under joint authority of the MSA and another authority. In those cases, the MSA confidentiality requirements apply just as they would to information that is submitted by a person or collected by an observer under an FMP implemented solely under the MSA. For information collection requirements implemented under FMPs under authorities other than the MSA, the Act's confidentiality requirements do not apply.

Voluntarily Submitted Data

Comment 16: A commenter asked NMFS for examples of information collected under an MSA program that isn't submitted to the Secretary, State agency, or marine fisheries commission and thus would not be subject to this rule. Additionally, a commenter sought clarification on the application of this

rule to data from cooperative research programs that is provided voluntarily. The commenters also requested clarification on privacy protections for data from recreational and voluntary collection programs not covered by MSA confidentiality and asserted that these voluntary data collection programs may suffer if data is considered non-confidential or not protected. They requested that the agency identify any data and privacy protections for information collected through State and NOAA surveys. They emphasized the need to differentiate between high-resolution data for research and data for management decisions and recommended that voluntary data streams, such as those from participants in an opt-in on-demand gear program, receive confidential protection.

Response: Where there is no MSA requirement for the information collected and a person voluntarily submits it, the MSA confidentiality prohibition against release does not apply. In addition, neither these regulations, nor any current or future ICPs developed pursuant to these regulations, would apply to information that is voluntarily provided to NMFS. For example, confidentiality restrictions would not apply to recreational fishing information collected through a state survey program and provided to NMFS. Any information voluntarily provided directly to NMFS through a NMFS-conducted survey, including voluntary surveys to collect cost and earnings data, would also not be MSA confidential information. While voluntarily submitted information is not confidential under the MSA, it may be exempt from public disclosure under FOIA as confidential business information or information that would result in an unwarranted invasion of personal privacy if made publicly available. As such, NMFS does not anticipate a reduction in participation of voluntary collections.

The MSA confidentiality requirements and procedures under this rule apply to observer information that was collected as part of a cooperative research initiative and that is under NMFS' custody and control. See 16 U.S.C. 1881a(b)(2) and 1802(32) (providing that ''observer information'' is confidential and referring to a cooperative research initiative in the definition of that term). In addition, if cooperative research is conducted under an exempted fishing permit and information collected through that research is required to be submitted under the terms of the permit, NMFS will treat it as confidential information for MSA purposes.

Lastly, NMFS intends to develop guidance on data aggregation standards as part of an ICP to address the level of data resolution needed to preserve confidentiality, if it is to be released for management purposes. See 50 CFR 600.410(b)(9).

Disclosure Under the Limited Access Program Exception

Comment 17: Commenters expressed a range of views on the LAP exception. A commenter stated that the proposed rule approach for the LAP exception seemed to be broader than what was intended and requested that NMFS narrow the LAP exception by revising the definition of LAP such that it only covers limited access privilege programs (LAPPs) and interpreting it to authorize release of confidential information only to a person who has applied for privileges under a LAPP. One commenter stated that ''determination'' for purposes of the LAP exception should apply only to the initial phase of a LAP program and not to monitoring under LAP-managed fisheries. Another commenter supported the proposed rule approach stating that treatment of some LAP participant information as non-confidential would enhance transparency and accountability. The commenter supported application of FOIA exemptions to information that is non-confidential under the LAP exception if necessary to protect personal privacy. Other commenters expressed qualified support for NMFS' proposed approach to the LAP exception but requested that NMFS consider a broader approach that would allow for more information to be treated as not confidential under that exception.

Response: The MSA LAP exception allows for the disclosure of information that a person is required to submit for a determination under a LAP. This final rule provides that the exception applies to LAPPs, 16 U.S.C. 1853a and 1802(26), and other fisheries that are managed through allocation of privileges to a person. The LAP exception uses the undefined term ''limited access programs;'' thus, in developing the proposed rule, NMFS considered what limited access management approaches may necessitate a specific confidentiality exception for disclosure of information. 89 FR 17358, 17362–17363 (March 11, 2024). After considering public comment, NMFS continues to believe the need is most evident for fisheries in which exclusive fishing privileges, such as a portion of a fishery's total allowable catch, are allocated to persons based on their historical catch, or other applicable historical fishery participation. *See Id.* at 17363 (noting the same need in the proposed rule). As discussed in the proposed rule, in these fisheries—often referred to as catch share programs—the availability of information is necessary for administration of appeals of allocations and related determinations and generally promotes transparency in the basis for such determinations. See NOAA's Catch Share Policy (available at *http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf*) for information on catch shares. Accordingly, in this final rule, the LAP exception applies to information that underlies allocations of those privileges and subsequent NMFS determinations that apply to those allocated privileges. Having considered public comment, NMFS still sees no basis for interpreting ''determination'' to apply only to determinations that are made in the initial phase of a LAP and not to any subsequent allocation determinations. In this final rule, the exception applies to any determination under a LAP involving allocation decisions at any time. § 600.420(c)(2) defines ''Determination'' to include allocations generally and therefore covers both the initial and any subsequent annual allocation of privileges. Additionally, the final rule defines determination to include approval or denial of a lease or sale of either allocated privileges or annual allocations and end-of-season adjustments.

The LAP exception is just that—an exception to the MSA confidentiality requirements. NMFS declines to adopt a broader interpretation of the LAP exception that would result in it operating as a rule, rather than exception, where confidentiality does not apply to most if not all information that a person is required to submit in LAP managed fisheries. This exception allows, but does not require, release of excepted information pursuant to the MSA. Other statutes, such as FOIA, may apply and protect certain agency records from public disclosure (See *e.g.,* FOIA protections below).

Comment 18: Some commenters expressed concern that NMFS would treat information that it accesses through an agreement with a State as non-confidential, notwithstanding a State law that protects and restricts access to that information.

Response: NMFS has sufficient authority to protect vessel-specific information to avoid any conflict with State law requirements. While the LAP exception allows for release of information that is submitted for a

determination under a LAP, it does not require that NMFS proactively do so. Should NMFS receive a FOIA request for information that is not confidential under the LAP exception, NMFS could, as appropriate, protect that information from public disclosure under FOIA Exemption Four, which applies to confidential business information, or Exemption Six, which applies to information the release of which would constitute an unwarranted invasion of personal privacy. In determining the appropriateness of application of FOIA Exemption Four, NMFS will consider whether the requested information is protected under state law because that is relevant to whether a person submitted it with the expectation that it would be treated as confidential.

Comment 19: Some commenters asked NMFS how this rule's approach to the LAP exception compares to NMFS' current practice. A commenter also asked how the approach would affect confidentiality of information in LAPPs. A commenter expressed concern that the LAP exception would apply to information that NMFS uses to consider whether to establish a LAP. They requested NMFS clarify when the exception would apply to such considerations and what information NMFS uses to determine whether to approve a lease or sale of allocated privileges, and when that information would be made public.

Response: The LAP exception applies to LAPPs and other fisheries that are often referred to as catch share programs. See response to Comment 17. Since the LAP exception was enacted in 2007, NMFS has applied the exception in the same manner codified in this final rule. In other words, NMFS, including its regional offices, has not applied the exception beyond information submitted or used for any initial or annual allocations, approval or denial of a lease or sale of allocated privileges, or end-of-season adjustments. Some regions have applied the LAP exception only in the context of allocation determinations. The final rule will establish a uniform approach and clarifies that information a person submits for a determination, as defined at § 600.420(c)(2), would be subject to the LAP exception.

With regard to establishing a LAP, a Council could transmit an FMP amendment to NMFS recommending a new LAP. Even if NMFS has not yet determined whether to implement the FMP amendment through a final rule, NMFS may decide, as an example, that releasing historical landings or catch information to a potential LAP participant would be helpful in order to provide sufficient time for vessel owners to verify or correct information that will be used for initial allocations, 89 FR at 17363, and this final rule clarifies that such information could be released. The LAP exception would not, however, be applicable for a Council's consideration of whether to establish a LAP. In other words, NMFS would not release MSA confidential information pursuant to the LAP exception when a Council was considering whether to establish a LAP. *Id.*

What information is used to determine whether to approve a lease or sale of allocated privileges, and thus whether and when such information would be made public, depends on the requirements established and implemented for a particular fishery.

Disclosure Related to International Fisheries Agreements and the High Seas Driftnet Fishing Moratorium Protection Act

Comment 20: Some commenters objected to the rule's approach to what is not confidential for MSA purposes under section 608(b)(2) of the FMPA, as amended. 16 U.S.C. 1826i(b)(2). Specifically, these commenters said that the approach was too broad and should be removed or revised so that information collected from U.S. vessels is treated as confidential even if shared with an RFMO to satisfy a United States obligation. Another commenter asked that NMFS clarify whether the FMPA authorizes NMFS to rely on each RFMO's confidentiality procedures to protect information or whether NMFS will engage each RFMO to ensure protection of business and personal information.

Response: NMFS agrees that the proposed approach is too broad and has made changes to the rule language to reflect this concern. FMPA sections 608(b)(2) and 606(d)(2)(B) do not define information provided to satisfy an RFMO obligation or foreign vessel information as ''not confidential'' for MSA purposes. Rather, these sections specify that ''with respect to the [FMPA]'' the MSA confidentiality requirements shall not apply for, or with respect to, obligations of the United States to share information under an RFMO of which the United States is a member or foreign vessel information. 16 U.S.C. 1826i(b)(2) and 1826g(d)(2)(B). To clarify this point, this final rule deletes references to RFMO and foreign vessel information in the definition of confidential information (proposed § 600.10) and consolidates and simplifies relevant FMPA text in § 600.415(f).

The FMPA permits disclosure of information, including information that is collected jointly under the MSA and a statute that implements an international fishery agreement, to ''any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement'' if they have policies and procedures in place to protect the information. *Id.* 1826i(b)(1). Such information may be vessel-specific. The FMPA allows for release of confidential information to the same list of entities as well as foreign governments if, in addition to having policies and procedures in place, the information is released for purposes specified at section 1826g(d)(2)(A)(ii). The FMPA authority described above is reflected in revised § 600.415(f), which states that NMFS may disclose such information, as authorized under, and subject to the requirements and conditions of, section 608(b) or 606(d)(2) of the High Seas Driftnet FMPA (16 U.S.C. 1826i(b) and 1826g(d)(2)), to entities specified in those sections. For such disclosures, specified entities must have in place policies and procedures to protect confidential information from unintended or unauthorized disclosure. The United States engages within the RFMOs it is a member of to support the development and adoption of policies and procedures, including confidentiality procedures to protect information from unintended or unauthorized disclosure. Where the United States is not a member of an RFMO, NMFS would consider the RFMO's policies and procedures on a case-by-case basis.

FMPA sections 608(b)(2) and 606(d)(2)(B), 16 U.S.C. 1826i(b)(2) and 1826g(d)(2)(B), provide for two exceptions where MSA confidentiality requirements do not apply; in other words, the policies and procedures described above are not required for disclosures of: (i) information disclosed with respect to obligations of the United States to share information under a RFMO of which the United States is a Member or (ii) information collected by NMFS regarding foreign fishing vessels. NMFS may determine what, if any, conditions may be appropriate for these two categories of information and will consider whether any additional, related guidance on agency management of information is needed in updated ICPs.

Comment 21: Commenters recommend that NMFS apply section 608 of the FMPA only to RFMOs

identified in 16 U.S.C. 1826g (section 606(d)(2)) rather than any RFMO.

Response: NMFS does not agree with limiting the FMPA disclosure of information provisions to U.S. obligations related to specifically listed RFMOs because the statute clearly applies to other RFMOs which implement fishery agreements, even if not specifically enumerated. Section 606 states that it applies to information collected under the joint authority of the MSA and the ATCA, WCPFC Implementation Act, ''or other statutes implementing international fishery agreements.'' The section authorizes disclosure of such information, subject to specific requirements and exceptions, to various entities, including the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement. *Id.* § 1826g(d)(2)(A). Section 608 uses similar language with regard to information and entities. Thus, NMFS has made no changes to this aspect of the final rule.

Comment 22: A commenter expressed support for the proposed rule allowing state and federal agencies and certain international organizations to access confidential information if necessary and appropriate under the FMPA. Another commenter asked that NMFS clarify how access by RFMOs would be different under the proposed rule compared to current practices. The commenter stated that NMFS should treat information as non-confidential for purposes of sharing it with an RFMO only if that RFMO's definition of what is confidential is the same as NMFS'.

Response: NMFS acknowledges the support for disclosure of confidential information pursuant to the FMPA and that information sharing furthers efforts to develop science-based measures for conservation and management of domestic and international fisheries and to strengthen enforcement of those measures. The FMPA disclosure of information provisions were enacted under the 2015 Illegal, Unreported, and Unregulated Fishing Enforcement Act, and NMFS does not expect that the final rule will substantively change how NMFS applies them in practice. Under the MSA, information is confidential if required to be submitted in compliance with requirements of the Act. While an RFMO may have a policy that defines confidential information, it would not control what is confidential for MSA purposes. As stated in response to Comment 20, under the FMPA, NMFS may disclose information that is subject to the MSA confidentiality requirements to RFMOs if they have policies and procedures in place to protect the information. NMFS' practice has been to make disclosures under this authority only to RFMOs that have policies and procedures to protect confidential information that are equivalent to NMFS'. NMFS will consider whether any additional, related guidance on agency management of this information is needed in updated ICPs.

Comment 23: A commenter urged NMFS to provide transparency on global fisheries management through release of information that is collected under the Seafood Import Monitoring Program (SIMP). The commenter referenced the proposed rule's implementation of the FMPA, which provides that information collected from foreign fishing vessels is not confidential. The commenter believes that there should be greater public access to information collected under the Marine Mammal Protection Act Import Provisions and other authorities administered by NMFS.

Response: As explained in response to *Comment 20,* the final rule revises the definition of confidential information (§ 600.10) to delete reference to foreign fishing vessels and addresses the FMPA in § 600.415(f)). The MSA does not have an exception for public disclosure of confidential information collected under SIMP. Further, the Trade Secrets Act (18 U.S.C. 1905) prohibits the disclosure of information collected and maintained in Customs and Border Protection (CBP) systems, which may limit the ability for SIMP data to be shared publicly (data collected for SIMP is submitted electronically through the Automated Commercial Environment maintained by CBP). However, per the FMPA, NMFS could disclose information collected under the program regarding foreign vessels, as provided under § 600.415(f) and if consistent with other applicable law.

Enforcement of Data Agreements and Prohibitions To Release Data

Comment 24: Several commenters asked for clarity regarding the responsible party for enforcing the prohibition under MSA 308(a), 16 U.S.C. 1858(a), non-disclosure agreements, or any mutual agreements to ensure confidentiality procedures are maintained by those entities.

Response: Section 308(a) of the MSA concerns the assessment of a civil penalty if the Secretary determines that a person has committed an act prohibited by section 307 of the MSA. NMFS is generally responsible for enforcing the various prohibitions in the MSA and in regulations promulgated under the MSA including the prohibitions set forth in this rule. NMFS works closely and collaboratively with States, marine fishery management commissions, and other entities to ensure appropriate handling of MSA confidential information. Under § 600.410(c)(1), NMFS may enter into an agreement with a state for the collection of confidential information by the state on behalf of the Secretary if NMFS determines that the state has authority comparable to the MSA for the protection of information and that the state will exercise such authority to protect confidential information. See response to *Comment 3* for further explanation. In addition, NMFS may enter into an agreement with a marine fisheries commission per § 600.410(c)(2). In such circumstances, NMFS may look to the states or commissions to carry out agreed upon duties to protect information using the comparable State or Commission authorities rather than MSA authorities.

Data Collected Under Other Programs for Management Purposes and Applicability of MSA Confidentiality Measures

Comment 25: One commenter asked for clarity regarding how data collected and transmitted to the NOAA Office Of Law Enforcement (OLE) would be treated, especially vessel position information (*i.e.,* Vessel Monitoring Systems (VMS) data) or data collected for scientific monitoring purposes in the Gulf of Mexico commercial shrimp fishery. In addition, the commenter would like clarity that OLE data would enter the Federal Information Security System and thereby be under NMFS custody and control for protection as confidential information.

Response: The NOAA OLE is an office under the NMFS. Every NMFS office, including OLE, maintains VMS and other forms of MSA confidential information in accordance with the NMFS's Federal Information Security Management Act requirements. The NMFS office responsible for initially collecting MSA confidential information has no bearing on OLE's authority to access and use any MSA confidential information collected by NMFS. VMS data, like other forms of confidential information, can be accessed by NMFS and others for fishery conservation and management purposes. In the case of the proposed data collected in the Gulf of Mexico shrimp fishery, the data has traditionally been submitted to NMFS, resides in NMFS' custody and control, and is managed within a NMFS FISMA domain. In cases where MSA confidential information must be used to enforce the provisions of the MSA,

that MSA confidential information may become part of the public record.

Access to and Disclosure of Confidential Information to a Council's Management Entities

Comment 26: Comments were mixed on the proposed procedure that allows Council executive directors to request access to confidential information for scientific and statistical committee (SSC) and/or advisory committee or panel (AP) members. Those opposed said that the MSA does not authorize SSC/AP members to have access to confidential information. Other commenters asserted that State law may not permit such access to information that a State provides to NMFS in accordance with an agreement with the State. Some commenters expressed concern that SSC/AP members may gain a competitive advantage if given such access. Other commenters were in support of this procedure and requested broadening this approach to allow access to any individuals or groups who provide support to NMFS with respect to fishery conservation and management under the MSA such as technical management teams, cooperative researchers and contract employees.

Response: The MSA authorizes disclosure of confidential information to the Councils: ''Nothing in this subsection [402(b)] shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this chapter . . .'' 16 U.S.C. 1881a(b)(3). The MSA requires establishment of SSCs, 16 U.S.C. 1852(g)(1), and APs that are necessary or appropriate to assist a Council in carrying out its functions, notably, the preparation of fishery management plans and amendments, 16 U.S.C. 1852(g)(2)–(h)(1). Given these mandates, the MSA authorizes disclosure of information to SSCs and APs if needed for conservation and management purposes and subject to the below-described procedures. § 600.415(d)(5) also acknowledges the potential need for Council contractors to access confidential information. However, NMFS does not believe it is necessary to expand § 600.415(d) to include any individuals or entities who might provide some support to NMFS related to MSA conservation and management.

As explained in the preamble to the proposed rule, a Council may request, through its executive director, that members of its SSCs and APs be given access to confidential information. Proposed § 600.415(d), however, provided that the executive director could make this request on their own initiative. This final rule revises that procedure to reflect the procedure stated in the preamble; *i.e.,* that a Council may, through its executive director, request that members of its SSCs and APs be provided access to confidential information. This procedure can be applied consistent with a more restrictive State law. For example, a Council could include in its standard operating procedures a requirement to consider whether access by Council SSC or AP members may be in potential conflict with a State law. A Council member for a State with such a concern could raise it for consideration by the Council.

Before approving any such request, NMFS must determine that access will not result in any Council member having a personal or competitive advantage (§ 600.415(d)(3)–(4)). Further, NMFS will consider whether providing confidential information is inconsistent with State law. NMFS recognizes that State law applicable to information that NMFS accesses under an information sharing agreement with a State may not always align with what is authorized under the MSA and other applicable Federal law. NMFS coordinates with its State partners to address such issues as they arise but has not experienced an unresolvable conflict between State and Federal mandates to date.

Definition of Business of Any Person

Comment 27: Comments were mixed on the proposed definition of ''business of any person.'' Some commenters supported the proposed definition because business information and identifying information need protection. These commenters stated that the definition would apply to information that reasonably constitutes proprietary information and would cause competitive harm if disclosed. Other commenters opposed this definition, stating that it is contrary to the MSA and the agency's long-standing interpretation of ''identity or business of any person'' as referring to the identity of a person or a business. These commenters further stated that the definition is too broad and overly protective and would violate MSA National Standard 2 (NS 2) and the Open Government Policy by limiting public access to information for use in cooperative research and other activities related to fisheries management.

Response: MSA section 402(b)(3) expressly states that aggregated or summarized information may be released only if it does not directly or indirectly disclose the ''identity *or* business of any person'' (emphasis added). This rule amends existing regulations to better align with the statutory text. Since the statute distinguishes between the identity or business of any person, the regulations must go beyond a reference to identity. In practice, NMFS aggregates information to protect a person's identity as well as the person's business information. In other words, NMFS does not simply strip identifiers off information that it releases. Many fishermen have business interests in protecting information related to their fishing practices, including the time, location and gear used. Disclosure of this information at a vessel-specific level, even if stripped of identifiers, could raise concerns about competitive disadvantages. In NMFS's experience, the types of operational and financial information listed in the ''business of any person'' definition are precisely the types of information that, if disclosed at the vessel-specific level, could result in competitive harm. The definition is clear and relatively easy to apply, reflects a common understanding of what constitutes the ''business'' of a person in the MSA regulatory context, and is consistent with the agency's long-standing practice.

NMFS supports transparency, public participation, and collaboration through the MSA's regional, process-intensive approach to fishery management. For information on the U.S. Open Government initiative, go to *https://www.gsa.gov/governmentwide-initiatives/us-open-government.* NMFS agrees that access to fisheries information facilitates transparency, public participation, and collaboration and that these goals should be taken into account in its handling of confidential information. To that end, NMFS intends to develop ICPs to provide guidance on the minimum level of aggregation disclosure advisable to protect the identity and the business of any person, consistent with MSA confidentiality requirements. NMFS also intends that the ICPs will provide guidance on when information should be considered to indirectly disclose a person's identity or business. NMFS disagrees that the definition of ''business of any person'' is inconsistent with National Standard 2, which requires the use of best scientific information available but does not address confidentiality of information.

Comment 28: Some commenters said that NMFS should revise the proposed definition of ''business of any person'' to further detail what constitutes financial and operational information,

and one commenter recommended revising the definition to include information reported by processors such as amount processed or processing capacity.

Response: NMFS disagrees that revisions are necessary to detail or further clarify what constitutes the business of any person. MSA 402(b) broadly requires the confidentiality of any information that a person is required to submit in compliance with the Act and any observer information. The definition covers common types of financial or operational information such as ownership information or fishing locations and is not intended to be exhaustive. The definition, which is finalized as proposed, includes estimated and actual processing capacity of U.S. fish processors, so it is not necessary to add ''amount processed.''

Comment 29: A commenter stated that NMFS should exclude landings, revenue, and effort on annual or fishing year basis from the proposed rule definition for confidential information in cases where data is available from fewer than three vessels or entities. In the commenter's view, public interest in this information outweighs the interest of the participants in the fishery who are benefiting from a public resource.

Response: Under MSA section 402(b)(3), NMFS may publicly release confidential information only in an aggregate or summary form that does not directly or indirectly disclose the identity or business of any person. Aggregated information from at least three submissions or entities is often necessary to achieve that standard. If data from only two entities is aggregated, one entity could identify itself and/or its own data, thus disclosing the other entity's business and/or identity. For that reason, NMFS is not revising the definition of ''confidential information'' to refer to fewer than three vessels or entities. NMFS will explore the potential for disclosing information in a summary form on an ad hoc basis.

Comment 30: Many commenters requested that NMFS clarify through ICPs how confidential information can be aggregated or summarized into a form that would not directly or indirectly disclose the identity or business of any person. A commenter felt that the proposed rule missed an opportunity to address the level at which confidential information must be aggregated for it to be releasable to the public.

Response: NMFS determined that it was necessary to revise the definition of ''aggregate or summary form'' and to define ''business of any person'' before it developed an ICP that provides guidelines for aggregation and summarization of confidential information. As stated above, development of ICPs based on definitions that could change would not be efficient. With the revised definitions finalized through this rule, NMFS can proceed to develop guidance on the minimum level of aggregation or summarization advisable to protect the identity and the business of any person. In doing so, NMFS intends to advance and balance three objectives: transparency through release of the broadest amount of information at the finest level detail; protection of the identity and the business of any person; and responsiveness to individual information requests.

Comment 31: A commenter requested that NMFS clarify whether the proposed rule would change existing practices on the requests for confidential information that is held by different entities (*e.g.,* a State fishery management commission, a State fishery management agency, and NMFS).

Response: The final rule clarifies NMFS' practices but does not change them or the practices that a state fishery management commission or a state may have for responding to requests for confidential information. Access, maintenance, and release requirements under the rule apply only to information that is under NMFS' custody and control (§ 600.405). NMFS treats information as subject to its custody and control when it physically obtains the information, which, for electronically submitted information, is when the information enters a NMFS FISMA domain (See Background section for FISMA explanation).

In addition to subpart E regulations, requests for confidential information subject to NMFS' custody and control would be addressed by FOIA request procedures under NOAA Administrative Order 205–14 and any applicable ICPs. Requests for information under the custody and control of a State fishery management commission or a state would be subject to their requirements and procedures. NMFS will continue to work with these entities in a non-regulatory fashion to reach mutual agreement on how to maintain the confidentiality of information submitted to them pursuant to an MSA requirement.

Applicability and Authority of MSA and Marine Mammal Protection Act (MMPA)

Comment 32: Several commenters supported the approach in the proposed rule with respect to marine mammals while others expressed concern. In particular, some commenters supported the proposed rule's treatment of details that concern interactions with marine mammals as non-confidential for MSA purposes. Other commenters stated that the proposed rule is inconsistent with the protection of identity and business of any person under the MSA and the MMPA and other regulations protecting confidential information. Many commenters expressed concern that disclosure of details of interactions with marine mammals would indirectly disclose the identity of the vessel involved in the interaction and urged NMFS to take steps to prevent such disclosures. Some commenters recommended that NMFS release general area descriptions or latitude/longitude block areas instead of specific interaction locations.

Response: For the reasons stated in the proposed rule, this final rule continues to exclude observer information on interactions with marine mammals from the definition of confidential information (§ 600.10). This information can be publicly disclosed provided that information regarding fishing practices and gear would not constitute a trade secret under the FOIA, 5 U.S.C. 552(b)(4). NMFS included the trade secret text in proposed and final § 600.10, recognizing concerns that disclosing details of marine mammal interactions (take) may indirectly disclose the identity of vessels involved in interactions.

Fishery management plans and regulations under the MSA must be consistent with applicable law, which includes the MMPA. *See* 16 U.S.C. 1853(a)(1)(C) and 1854(a)(1), (3), (b)(1), and (c)(7). Release of observer information that concerns interactions with marine mammals advances implementation of MMPA mandates, and, in particular, such information is critical for deliberations of MMPA Take Reduction Teams (TRTs). *See* 89 FR at 17367–17368 (providing further explanation of MMPA mandates in proposed rule preamble).

This final rule reflects NMFS's long-standing approach as the agency has been presenting detailed information on commercial fisheries' interactions with marine mammals to TRTs since the program was mandated in 1994 by the MMPA. To prevent disclosures of the identity of a vessel involved in interactions, NMFS evaluates whether a release of detailed interaction information would, if combined with past disclosures, identify the vessel involved in the interaction. Additionally, if appropriate for purposes of the TRTs' goals and objectives, we routinely strive to present

data in aggregated form, particularly when illustrating latitude/longitude positions of individual takes. For example, TRTs, which include fishing industry representatives, may be particularly interested in viewing take locations by season to discern whether patterns in bycatch exist. In that case, NMFS would aggregate all available years of data to evaluate seasonal patterns. Further, the specific location of an interaction may in some cases be essential to develop meaningful mitigation measures and comply with the MMPA goals of reducing mortality and serious injury incidental to commercial fishing. For example, a particular marine mammal interaction may have occurred in association with a specific oceanographic feature (*e.g.,* a seamount, the continental shelf break) that would only be recognizable when evaluating individual latitude/longitude positions and not as a block area. In these circumstances, the TRTs cannot work effectively without disclosing the detailed, vessel-specific information upon which their analysis and determinations rely. In recent years, NMFS has disclosed this information through TRTs without receiving concerns that such disclosure harms MSA confidentiality interests. By knowing this information, TRTs can design more precise, targeted recommendations for mitigation measures, instead of broad, overly restrictive recommendations, which can lead to and has led to reduced regulatory burden on a fishery.

Comment 33: Several commenters recommended that photos and videos of marine mammals should be excluded from the definition of confidential information given they cannot readily be aggregated. The commenters also asserted that other information such as the nature and severity of interactions, samples collected, handling and release details, etc. should be excluded from the definition.

Response: While photos and videos may be useful, they are not among the specific information that TRTs need to develop measures to reduce take occurring in a fishery. However, NMFS has and will continue to release marine mammal injury or mortality events captured by cameras if the image does not disclose the identity or any unique gear configurations that may constitute a trade secret as defined for purposes of FOIA Exemption Four. See NMFS' Policy on Electronic Technologies and Fishery-Dependent Data Collection available at *https://media.fisheries.noaa.gov/2022-05/04-115-04_0.pdf.* In making such public disclosures, NMFS will evaluate the image that captures the marine mammal interaction and if feasible and practicable take steps to obscure identifying information prior to releasing it publicly. In contrast to photos, video collected through EM systems cannot be aggregated or summarized. NMFS will provide access to that information, and release it publicly, only as authorized under §§ 600.415 and 600.420.

Details of interactions (*e.g.,* nature and severity of interactions, samples collected, handling and release details, etc.) may also be useful, but they are not among the specific information that TRTs need to develop measures to reduce take occurring in a fishery. Thus, NMFS is not excluding this information as well as photos and videos from the definition of confidential information.

Comment 34: Some commenters stated that NMFS could allow TRTs to receive information without releasing it publicly by restricting release of detailed information on interactions with marine mammals to members of TRTs through confidentiality agreements.

Response: NMFS considered requiring members of TRTs to sign non-disclosure agreements but determined this approach is not appropriate because observer information on marine mammal interactions described in § 600.10 is not confidential information and may be disclosed. Additionally, as noted in the proposed rule, TRTs established under the MMPA must meet in public and develop plans to reduce incidental mortality and serious injury; specific details of interactions with marine mammals are critical to developing such plans. *See* 16 U.S.C. 1387(f)(6) (establishing and setting forth requirements for TRTs).

Comment 35: One commenter recommended that NMFS clarify the relationship between the MSA and MMPA, the authorities governing deployment of observers and the collection of information under each statute, and whether the confidentiality rules differ depending on the type of information and purpose for which they will be used.

Response: Section 600.10 of the proposed rule and final rules exclude details of observer information on interactions with marine mammals from the definition of ''confidential information'' for the purposes of the MSA. NMFS may require observers and observer coverage and other data reporting and collection under multiple statutory authorities depending on the conservation and management needs of and objectives of the program and the nature of, gear used, area fished during, or other circumstances for a particular trip. Regardless of whether an observer is deployed in a fishery under both MMPA and MSA authorities or solely MSA authority, observer information related to interactions with marine mammals will not be considered confidential information for MSA purposes.

Comment 36: Some commenters viewed NMFS' approach to excluding marine mammal interactions as too narrow and requested broadening it to include all protected species and bycatch data under the MMPA, Endangered Species Act (ESA), and Migratory Bird Treaty Act (MBTA), including non-protected species bycatch. One commenter asserted that the approach should be broadened to include vessel interactions with ESA-listed species, noting that specific conditions imposed on a fishery by ESA section 7 biological opinions and incidental take statements require detailed reporting and analyses of takes to assess impacts of proposed actions on ESA-listed species. The commenter asserted that this information should be reported publicly so that it can be used by stakeholders to review and examine, and sometimes challenge, agency decisions under the ESA, given the ESA explicitly provides for citizen suits in this regard.

Response: The MSA does not allow, nor do other Federal statutes require, disclosure of details on interactions with ESA-listed species, seabirds, bycatch of nonprotected species, or species protected under state statutes. *See* 89 FR at 17367–17368 (providing further explanation of ESA in proposed rule preamble). Observer information regarding interactions with ESA-listed species or other protected species would continue to be releasable in aggregate or summary form consistent with MSA section 402(b)(3) and these regulations.

Proposed Changes Clarifying NMFS' Confidentiality Regulations

Comment 37: Some commenters said NMFS should clarify whether regulations are necessary to implement MSA 402(b)(1)(I), 16 U.S.C. 1881a(b)(1)(I), which allows other federal agencies to access information for enforcement of forced labor prohibitions.

Response: For ease of reference, § 600.415 of the final rule includes the statutory text of MSA 402(b)(1)(I). NMFS does not believe regulations are needed to interpret that text. NMFS will prescribe additional procedures to implement this exception by regulation as may be necessary to preserve the confidentiality of information.

Entities Potentially Affected by the Rule

Comment 38: A commenter stated that any vessel with a Federal fishing permit should be included in a description of potential entities affected by the rule because any of those vessels might be subject to observer coverage and thus potentially affected if there are changes to how observer data are treated (confidential or not).

Response: This rule applies to information that is maintained by NMFS and subject to its custody and control and does not impose regulatory burdens on vessels. The rule does not change the extent of required observer coverage, and therefore there is no need to analyze impacts on vessels that might be potentially be subject to observer coverage. The rule broadly addresses NMFS' responsibility under MSA section 402(b) to maintain as confidential any information that a person is required to submit in compliance with any regulation or requirement under the MSA and any observer information. 89 FR at 17359. If a vessel were to be subject to MSA observer coverage requirements, the observer information would be handled as confidential consistent with the Act and this rule.

Changes From the Proposed Rule

In response to public comment, and after further agency consideration, NMFS has made minor edits for clarity and several substantive changes between the proposed and final rules. These changes are summarized and explained here.

The proposed rule (§ 600.10) defined confidential information to not include (1) vessel-specific information provided in satisfaction of obligations of the United States to share information under a RFMO of which the United States is a member and (2) any information collected by NMFS under the MSA regarding foreign vessels. This final rule deletes references to these two categories from § 600.10 and addresses the FMPA in § 600.415(f).

Final § 600.405 continues to state that the regulations apply to confidential information as defined in § 600.10. To clarify this section, NMFS revised it to provide that ''[a]gency access, maintenance, and release responsibilities [under this subpart] apply only to confidential information under NMFS' custody and control.''

In the proposed rule, NMFS also defined ''electronic monitoring service provider'' as any person who manages observer information collected by an electronic monitoring system required under an MSA regulation. The proposed rule left out ''or as part of a cooperative research initiative,'' a phrase that is in the MSA definition of observer information, 16 U.S.C. 1802(32). This final rule adds that statutory text to the regulatory definition.

NMFS proposed a procedure under which a Council may, through its executive director, request that members of its SSC and AP that are not Federal or State employees be granted access to confidential information. Although accurately described in the preamble, the proposed regulation incorrectly provided that the Council executive director, rather than the Council itself, may initiate it. This final rule corrects this error. Additionally, NMFS makes a technical revision to this procedure so that it applies to Members of the Council's advisory panels (plural), rather than a panel.

To implement the FMPA, the proposed rule excluded two categories of information from the definition of confidential information (see § 600.10 explanation above) and addressed access to information in proposed §§ 600.415(f)–(g). The final rule deletes FMPA-related references in § 600.10, deletes § 600.415(g), and addresses the FMPA in revised § 600.415(f). The revised text states, for the purposes of sections 608(b) and 606(d)(2) of the FMPA (16 U.S.C. 1826i(b) and 1826g(d)(2)), international fishery agreement has the same meaning as international fishery management agreement at 50 CFR 300.201. In addition, NMFS may disclose information, as authorized under, and subject to the requirements and conditions of, section 608(b) or 606(d)(2) of the FMPA to entities specified in those sections. For purposes of applying section 608(b) and 606(d)(2), the confidentiality requirements of section 402(b) of the Magnuson-Stevens Act, 16 U.S.C. 1881a(b), shall not apply with respect to (1) obligations of the United States to share information under a Regional Fishery Management Organization (RFMO) of which the United States is a Member; or (2) information collected by NMFS regarding foreign fishing vessels. The same cross-reference to 50 CFR 300.201 (international fishery management agreement), noted above, was in the proposed rule.

The final rule includes a confidentiality of information exception from MSA 402(b)(1)(I), 16 U.S.C. 1881a(b)(1)(I), related to illegal unreported, or unregulated fishing and forced labor. See final rule element # 7 in the Background section, above. NMFS did not include the statutory text in the proposed rule, but for ease of reference added it to the final rule regulatory text.

Classification

NMFS is issuing this final rule pursuant to section 305(d) of the MSA. The NMFS Assistant Administrator has determined that this final rule is consistent with the MSA and other applicable laws, including the FMPA. This final rule has been determined to be not significant for purposes of Executive Order 12866. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Certification Under the Regulatory Flexibility Act Analysis

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. NMFS received one comment regarding this certification. The commenter stated that any vessel with a Federal fishing permit should be included in a description of potential entities affected by the rule because any of those vessels might be subject to observer coverage and thus potentially affected if there are changes to how observer data are treated (confidential or not). This rule applies to information that is maintained by NMFS and subject to its custody and control and does not impose regulatory burdens on vessels. The rule does not change the extent of required observer coverage, and therefore there is no need to analyze impacts on vessels that might potentially be subject to observer coverage. The rule broadly addresses NMFS' responsibility under MSA section 402(b) to maintain as confidential any information that a person is required to submit in compliance with any regulation or requirement under the MSA and any observer information. If a vessel were to be subject to MSA observer coverage requirements, the observer information would be handled as confidential consistent with the Act and this rule.

This final rule is not expected to have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required, and none was prepared.

Lists of Subjects in 50 CFR Part 600

Confidential business information, Fisheries.

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 amends 50 CFR part 600 as follows:

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Amend § 600.10 by:
■ a. Revising the definition of ''Aggregate or summary form'';
■ b. Adding, in alphabetical order, definitions for ''Business of any person'', ''Confidential information'',
■ c. Removing the definitions of ''Confidential statistics'' and ''Data, statistics, and information''; and
■ d. Adding, in alphabetical order, definitions for ''Electronic monitoring service provider'', ''Information sharing obligation of a Regional Fishery Management Organization (RFMO)'', ''Observer provider'', and ''Regional Fishery Management Organization''.

The revisions and additions read as follows:

§ 600.10 Definitions.

* * * * *

Aggregate or summary form means information structured in such a way that the identity or business of any person (defined at 16 U.S.C. 1802(36)) who submitted the information cannot be directly or indirectly determined either from the present release of the information or in combination with other releases.

* * * * *

Business of any person means:

(1) Financial information such as ownership information, cash flow documents, income statements, or information that contributes to the preparation of balance sheets; or

(2) Operational information such as fishing locations, time of fishing, specific gear configuration, catch by species in numbers or weight thereof, number of hauls, number of employees and estimated processing capacity of and the actual processing capacity utilized by U.S. fish processors.

* * * * *

Confidential information includes any observer information as defined under 16 U.S.C. 1802(32) or any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with any requirement or regulation under the Magnuson-Stevens Act. Confidential information does not include observer information related to interactions with species protected under the Marine Mammal Protection Act: the date, time, and location of interactions, the type of species, and the fishing practices and gear involved provided that information regarding fishing practices and gear would not constitute a trade secret under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

* * * * *

Electronic monitoring service provider means any person who manages observer information collected by an electronic monitoring system required under an MSA regulation or as part of a cooperative research initiative.

* * * * *

Information sharing obligation of a Regional Fishery Management Organization (RFMO) means a measure or part thereof that creates a binding requirement on the United States to report certain information by virtue of its membership in the respective RFMO.

* * * * *

Observer provider means any person that collects observer information by placement of observers on or in fishing vessels, shoreside processors, or stationary floating processors under a requirement of the MSA or as part of a cooperative research initiative.

* * * * *

Regional Fishery Management Organization (RFMO) means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures.

* * * * *

§ 600.130 [Amended]

■ 3. In § 600.130, remove the word ''statistics'', wherever it appears, and add in its place the word ''information''.

■ 4. Subpart E to part 600 is revised to read as follows:

Subpart E—Confidentiality of Information

Sec.

600.405 Applicability.
600.410 Protection of confidential Information.
600.415 Access to confidential information
600.420 Release of confidential information.
600.425 Release of information in aggregate or summary form.

Subpart E Confidentiality of Information

§ 600.405 Applicability.

This subpart applies to confidential information as defined at § 600.10. Agency access, maintenance, and release responsibilities apply only to confidential information that is under NMFS' custody and control.

§ 600.410 Protection of confidential information.

(a) *General.* This section requires control procedures related to confidential information and provides procedures for the protection of certain confidential information submitted to NMFS and State fishery management agencies or marine fisheries commissions pursuant to a statutory or regulatory requirement imposed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

(b) *Confidential information collected by NMFS.* NMFS must establish internal control procedures for the maintenance of and access to any confidential information. The control procedures should include, but are not limited to, the following:

(1) Requirements for information system management and data storage to prevent unauthorized access to or disclosure of confidential information;

(2) Procedures for NMFS employees to access confidential information;

(3) Procedures for providing access to confidential information by states, Councils, and Marine Fisheries Commissions;

(4) Procedures for evaluating whether members of a Council, or a Council Scientific and Statistical Committee (SSC), plan team, or Advisory Panel (AP) could gain personal or competitive advantage from access to confidential information under § 600.415(d);

(5) Procedures for evaluating requests by contractors, grantees, cooperative agreement recipients and other external individuals and organizations to access confidential information;

(6) Procedures for vessel owners to access and request confidential information, including historic information associated with a fishing permit;

7) Standardized sharing agreements that acknowledge the confidentiality and protection of information from public disclosure;

(8) Template for written authorization for release of confidential information for purposes of § 600.420(f);

(9) Procedures for aggregating and summarizing confidential data and responding to requests for non-confidential information;

(10) Any other procedures as necessary to maintain the confidentiality of information.

(c) *Confidential information collected by State Fishery Management Agencies or Marine Fisheries Commissions.* NMFS may enter into an agreement with a state or a Marine Fisheries Commission for the collection of confidential information on behalf of the Secretary provided that NMFS, as part of the agreement, determines that:

(1) The state has confidentiality of information authority comparable to the Magnuson-Stevens Act and that the state will exercise this authority to prohibit public disclosure of confidential information;

(2) The marine fisheries commission has established policies and procedures comparable to the Magnuson-Stevens Act and that the Commission will exercise such policies and procedures to prohibit public disclosure of confidential information.

(d) *Observer and Electronic Monitoring Services.* (1) Observer providers. NMFS may allow the collection of observer information by an observer pursuant to a confidentiality agreement that:

(i) Specifies procedures that the observer provider will apply to protect confidential information from public disclosure; and

(ii) Requires that the observer provider, each observer, and each of its other employees that will handle confidential information acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of such information provided under 16 U.S.C. 1858.

(2) Electronic monitoring service providers. NMFS may allow the handling of observer information by an electronic service provider pursuant to a confidentiality agreement that:

(i) Specifies procedures that the electronic monitoring service provider will apply to protect confidential information from public disclosure; and

(ii) Requires that the electronic monitoring service provider, and each of its employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of such information provided under 16 U.S.C. 1858.

(3) As part of any agreement with an observer provider under paragraph (d)(1) of this section, NMFS may allow the sharing of observer information among and between observers and observer providers for:

(i) Training or preparation of observers for deployments on specific vessels; or

(ii) Validating the accuracy of the observer information collected.

§ 600.415 Access to confidential information.

Confidential information may be accessed by the following persons subject to any specified conditions and procedures:

(a) *Federal employees.* (1) Responsible for fishery management plan (FMP) development, monitoring, or enforcement, including persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS;

(2) At the request of another Federal agency, if providing the information supports homeland security and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)); or,

(3) To the extent necessary and appropriate to administer Federal programs established to combat illegal, unreported, or unregulated fishing or forced labor (as such terms are defined in section 11329 of the Don Young Coast Guard Authorization Act of 2022 [16 U.S.C. 1885a note]), which shall not include an authorization for such agencies to release data to the public unless such release is related to enforcement.

(b) *State or marine fisheries commission employees.* As necessary to further the mission of the Department of Commerce, subject to an agreement with NMFS that prohibits public disclosure of confidential information;

(c) *State enforcement personnel.* State employees who are responsible for enforcing FMPs, provided that the state for which the employee works has entered into a Joint Enforcement Agreement with NOAA and the agreement is in effect;

(d) *Councils.* A Council may, through its Executive Director, request access for the following:

(1) The Council's employees who are responsible for FMP development and monitoring;

(2) Members of the Council for use by the Council for conservation and management, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(3) Members of any Council scientific and statistical committee (SSC) established under section 302(g) of the Magnuson-Stevens Act who are not Federal or State employees, if necessary for the SSC to assist and advise the Council as provided under the Magnuson-Stevens Act, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(4) Members of any Council advisory panel (AP) established under section 302(g) of the Magnuson-Stevens Act, if necessary for the AP to provide information and recommendations on, and assist in the development of FMPs and amendments thereto, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(5) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes but only if approved by NMFS and subject to a confidentiality agreement; and

(e) *Vessel Monitoring System Information.* Nothing in these regulations contravenes section 311(i) of the Magnuson-Stevens Act which requires the Secretary to make vessel monitoring system information directly available to the following:

(1) Enforcement employees of a State with which NMFS has entered into a Joint Enforcement Agreement and the agreement is in effect;

(2) State management agencies involved in, or affected by, management of a fishery if the State has entered into an agreement with NMFS that prohibits public disclosure of the information.

(f) *High Seas Driftnet Fishing Moratorium Protection Act (FMPA).* (1) For purposes of sections 608(b) and 606(d)(2) of the FMPA (16 U.S.C. 1826i(b) and 1826g(d)(2)), international fishery agreement has the same meaning as international fishery management agreement at 50 CFR 300.201.

(2) NMFS may disclose information, as authorized under, and subject to the requirements and conditions of, section 608(b) or 606(d)(2) of the FMPA to entities specified in those sections.

(3) For purposes of applying section 608(b) and 606(d)(2), the confidentiality requirements of section 402(b) of the Magnuson-Stevens Act, 16 U.S.C. 1881a(b), shall not apply with respect to:

(i) Obligations of the United States to share information under a Regional Fishery Management Organization (RFMO) of which the United States is a Member; or

(ii) Information collected by NMFS regarding foreign fishing vessels.

§ 600.420 Release of confidential information.

NMFS will not disclose to the public any information made confidential pursuant to the Magnuson-Stevens Act, except the agency may disclose information when:

(a) Authorized by regulations issued by the Secretary to implement recommendations contained in an FMP prepared by the North Pacific Council and approved by NMFS to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(b) Observer information is necessary in proceedings to adjudicate observer certifications;

(c) Information is required to be submitted to the Secretary for any determination under a limited access program (LAP). This exception applies at the level of confidential information that NMFS has used, or intends to use, for a regulatory determination under a LAP. This includes information that was submitted before the fishery was a LAP and that NMFS subsequently uses or intends to use for a LAP determination. For the purposes of this exception:

(1) *Limited Access Program* means a program that allocates exclusive fishing privileges, such as a portion of the total allowable catch, an amount of fishing effort, or a specific fishing area, to a person.

(2) *Determination* means a decision that is specific to a person and exclusive fishing privileges held or sought under a limited access program. These decisions are allocations, approval or denial of a lease or sale of allocated privileges or annual allocation, and end of season adjustments.

(d) Required to comply with a Federal court order. For purposes of this exception:

(1) *Court* means an institution of the judicial branch of the U.S. Federal Government. Entities not in the judicial branch of the Federal Government are not courts for purposes of this section;

(2) *Court order* means any legal process which satisfies all of the following conditions:

(i) It is issued under the authority of a Federal court;

(ii) A judge or magistrate judge of that court signs it; and

(iii) It commands NMFS to disclose confidential information as defined under § 600.10.

(e) Necessary for enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA or when necessary for enforcement of any State living marine resource laws, if that State has a joint enforcement agreement that is in effect.

(f) A person that is subject to a Magnuson-Stevens Act submission of information requirement or their designee provides written authorization to the Secretary authorizing release of such information to other persons for reasons not otherwise provided for in section 402(b) of the Magnuson-Stevens Act and such release does not violate other requirements of the Magnuson-Stevens Act. That person or their designee must prove identity, and authorization to act if serving as a designee, by a statement consistent with 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. The statement of identity, and authority to serve as a designee, must be in the following form:

(1) If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)''.

(2) If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

§ 600.425 Release of information in aggregate or summary form.

NMFS may disclose in any aggregate or summary form information that is required to be maintained as confidential under these regulations.

■ 5. In § 600.725, add paragraph (y) to read as follows:

§ 600.725 General prohibitions.

* * * * *

(y) Disclose confidential information without authorization.

[FR Doc. 2024–29366 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 242
Tuesday, December 17, 2024

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2661; Project Identifier MCAI–2024–00269–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2015–02–14, which applies to all Airbus SAS Model A318 series airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2015–02–14 requires repetitive inspections for cracking, damage, correct installation, and correct adjustment of the main landing gear (MLG) door hinge and actuator fittings on the keel beam, corrective actions if necessary, and revision of the existing maintenance or inspection program, as applicable. Since the FAA issued AD 2015–02–14, a new design of the MLG door keel beam hinge and actuator fitting was developed. This proposed AD would continue to require the actions specified in AD 2015–02–14, add an optional terminating action, and revise the applicability, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 31, 2025.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2661; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email: *timothy.p.dowling@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2661; Project Identifier MCAI–2024–00269–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email: *timothy.p.dowling@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2015–02–14, Amendment 39–18081 (80 FR 11096, March 2, 2015) (AD 2015–02–14), for all Airbus SAS Model A318 series airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–211, –212, –214, –231, –232, and –233 airplanes; and A321–111, –112, –131, –211, –212, –213, –231, and –232 series airplanes. AD 2015–02–14 was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2012–0118, dated July 4, 2012 (EASA AD 2012–0118) (which corresponds to FAA AD

2015–02–14), to correct an unsafe condition.

AD 2015–02–14 requires repetitive inspections for cracking, damage, correct installation, and correct adjustment of the main landing gear (MLG) door hinge and actuator fittings on the keel beam; corrective actions if necessary; and revision of the existing maintenance or inspection program, as applicable. The FAA issued AD 2015–02–14 to detect and correct cracking on the MLG door hinge fitting and actuator fitting on the keel beam, which could lead to in-flight detachment of an MLG door, possibly resulting in injury to persons on the ground and/or damage to the airplane.

Actions Since AD 2015–02–14 Was Issued

Since the FAA issued AD 2015–02–14, EASA superseded AD 2012–0118, dated July 4, 2012, and issued EASA AD 2024–0097R2, dated July 12, 2024 (EASA AD 2024–0097R2) (referred to after this as the MCAI) to correct an unsafe condition on certain Airbus SAS Model A318–111, –112, –121, –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The MCAI states that Airbus SAS Model A318–111, A318–112, A318–121, A318–122; Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133; Model A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233; Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes are commercially known as current engine option (CEO) airplanes.

The MCAI states that Airbus SAS Model A319–151N, A319–153N, A319–171N; Model A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N; Model A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes are commercially known as new engine option (NEO) airplanes.

The MCAI states that after EASA AD 2012–0118 was issued, a new design of the MLG door keel beam hinge and actuator fitting was certified for in-service embodiment through Airbus mod 165315 for CEO airplanes. The MCAI states that the applicability is expanded to include the NEO airplanes, which are subject to the same unsafe condition.

The FAA is proposing this AD to detect and correct cracking on the MLG door hinge fitting and actuator fitting on the keel beam, which could lead to in-flight detachment of an MLG door, possibly resulting in injury to persons on the ground and/or damage to the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2661.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2015–02–14, this proposed AD would retain all the requirements of AD 2015–02–14. Those requirements are referenced in EASA AD 2024–0097R2, which, in turn, is referenced in paragraph (g) of this proposed AD. Paragraph (i) of this proposed AD does restate the requirement of paragraph (k) of AD 2015–02–14, as EASA AD 2024–0097R2 only cancels Task 533154–02–1 of the Airbus A318/A319/A320/A321 ALS Part 2-Damage Tolerant Airworthiness Limitations Items (DT ALI), Revision 01, dated April 4, 2012; Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 11, dated September 2010. However, it does not require removal from the maintenance or inspection program for certain airplanes. This proposed AD would require removal of this task.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2024–0097R2 specifies procedures for repetitive detailed visual, high frequency eddy current (HFEC), and ultrasonic inspections of the MLG door actuator fittings on the keel beam. Corrective actions include replacement of the affected MLG door actuator fitting, and repair of the bush migration, the wear marks underneath bolt head, and other damages on left and right sides of the airplane.

EASA AD 2024–0097R2 specifies procedures for repetitive detailed visual and HFEC inspections of the MLG door hinge fittings on the keel beam. Corrective actions include replacement of the MLG door hinge fitting, and repair of the bush migration, wear marks underneath bolt head, and other damages left and right sides of the airplane.

EASA AD 2024–0097R2 also specifies procedures for modifying the actuator and hinge fittings at the MLG door for the following parts: MLG actuator fittings, hinge fittings, and connecting plates between Frame (FR) 42 and FR 43; accomplishment of this modification terminates the repetitive inspections.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2015–02–14, add an optional terminating action, and revise the applicability by adding NEO airplanes and removing airplanes with a certain modification. This proposed AD would also require accomplishing the actions specified in the material described previously.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,766 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	20 work-hours × $85 per hour = $1,700, per inspection cycle.	$0	$1,700, per inspection cycle.	$3,002,200, per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modify the actuator and hinge fittings at MLG door	82 work-hours × $85 per hour = $6,970	$52,000	$58,970

The FAA estimates the following costs to do any fitting replacement that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need a fitting replacement:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
38 work-hours × $85 per hour = $3,230	$6,742	$9,972

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

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2015–02–14, Amendment 39–18081 (80 FR 11096, March 2, 2015); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2024–2661; Project Identifier MCAI–2024–00269–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 31, 2025.

(b) Affected ADs

This AD replaces AD 2015–02–14, Amendment 39–18081 (80 FR 11096, March 2, 2015) (AD 2015–02–14).

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2024–0097R2, dated July 12, 2024 (EASA AD 2024–0097R2).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A319–151N, –153N, and –171N airplanes.

(4) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(5) Model A320–251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(6) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(7) Model A321–251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracks on the main landing gear (MLG) door hinge

fitting and actuator fitting on the keel beam. The FAA is issuing this AD to detect and correct cracking on the MLG door hinge fitting and actuator fitting on the keel beam. The unsafe condition, if not addressed, could lead to in-flight detachment of an MLG door, possibly resulting in injury to persons on the ground and/or damage to the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0097R2.

(h) Exceptions to EASA AD 2024–0097R2

(1) Where EASA AD 2024–0097R2 refers to ''16 May 2024 [the effective date of the original issue of this AD],'' this AD requires using the effective date of this AD.

(2) Where EASA AD 2024–0097R2 refers to ''18 July 2012 [the effective date of EASA AD 2012–0118],'' this AD requires using April 6, 2015 (the effective date of AD 2015–02–14).

(3) Where EASA AD 2024–0097R2 specifies to ''contact Airbus for approved repair instructions and, within the compliance time specified therein, accomplish those instructions accordingly,'' replace that text with ''all repairs must be done before further flight using a method approved by the Manager, International Validation Branch, FAA; or the European Union Aviation Safety Agency (EASA); or SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.''

(4) Where paragraph (6) of EASA AD 2024–0097R2 describes an airplane that has been inspected per ''ALI task 533154–03–2, 533154–04–2 or 533154–10–1, or in accordance with the instructions of inspection SB 1 (at any Revision) or inspection SB 2 (at any Revision),'' replace that text with ''ALI task 533154–03–2, 533154–04–2 or 533154–10–1, or in accordance with the instructions of Airbus SB A320–53–1195 or SB A320–53–1325 at any Revision, as applicable, or Airbus SB A320–53–1196 or SB A320–53–1326 at any Revision, as applicable.''

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0097R2.

(i) Retained Maintenance or Inspection Program Revision, With Added Airplanes and Compliance Time

This paragraph restates the requirements of paragraph (k) of AD 2015–02–14 with added airplanes and compliance time. At the applicable time specified in paragraph (i)(1) or (2) of this AD: Revise the maintenance or inspection program, as applicable, to remove Task 533154–02–1 of the Airbus A318/A319/A320/A321 ALS Part 2-Damage Tolerant Airworthiness Limitations Items (DT ALI), Revision 01, dated April 4, 2012; Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; or Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 11, dated September 2010. The actions required by this AD take precedence over Task 533154–02–1 of the Airbus A318/A319/A320/A321 ALS Part 2-Damage Tolerant Airworthiness Limitation Items (DT ALI), Revision 01, dated April 4, 2012; Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 10, dated October 2009; and Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 11, dated September 2010.

(1) For airplanes identified in paragraphs (c)(1), (2), (4), and (6) of this AD: After the effective date of AD 2015–02–14 and before further flight after doing the initial inspections required by paragraph (g) of this AD.

(2) For airplanes identified in paragraphs (c)(3), (5), and (7) of this AD: After the effective date of this AD and before further flight after doing the initial inspections required by paragraph (g) of this AD.

(j) No Reporting Requirement

Although the material referenced in EASA AD 2024–0097R2 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Additional AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD and email to: *AMOC@faa.gov*.

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

(ii) AMOCs approved previously for AD 2015–02–14 are approved as AMOCs for the corresponding provisions of EASA AD 2012–0118 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (k)(2) of this AD, if any material contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Additional Information

For more information about this AD, contact Tim Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email: *timothy.p.dowling@faa.gov*.

(m) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2024–0097R2, dated July 12, 2024.

(ii) [Reserved]

(4) For EASA AD 2024–0097R2 identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.

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

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

Issued on December 11, 2024.

Suzanne Masterson,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–29620 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2662; Project Identifier MCAI–2024–00448–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767–300 series airplanes modified by a certain supplemental type certificate (STC). This proposed AD was prompted by a discovery that certain pitot-static tubing of the first officer's pitot-static system was installed incorrectly in the main and mid equipment center during the airplane conversion from passenger to freighter. This proposed AD would require a visual inspection of certain pitot-static rigid tubes and flexible hoses to determine whether low points exist, and if necessary, related investigative and corrective actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 31, 2025.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–2662; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Israel Aerospace Industries, Ltd. material identified in this proposed AD, contact Israel Aerospace Industries, Ltd., Ben-Gurion International Airport, Israel 70100; telephone 972–39359826; email *tmazor@iai.co.il.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3536; email: *Joe.Salameh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2024–2662; Project Identifier MCAI–2024–00448–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3536; email: *Joe.Salameh@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued CAAI AD ISR I–34–2024–07–1, dated August 6, 2024 (CAAI AD ISR I–34–2024–07–1) (also referred to after this as the MCAI), to correct an unsafe condition for The Boeing Company Model 767–300 series airplanes, that have been modified to freighters, in accordance with CAAI STC SA–218 (FAA STC ST02040SE, EASA STC 10028430, CAAC VSTC0812, TCCA SA14–67, ANAC 2011S03–12). Only FAA STC ST02040SE is approved for U.S. operators. The MCAI states that due to the pitot-static tubing improper rerouting on the airplane conversion from passenger to freighter, two erroneous conditions were found in the tubing connecting the pitot and the static system tubing to the right air data computer belonging to the first officer system: The flexible hoses part number (P/N) BACH30BC06–0097 and P/N BACH30BC05–0111, creating a potential water trap; and rigid tubes P/N 233T9110–437 and P/N 233T9110–320/314 installed through a structure 9G rigid barrier opening, creating a potential water trap.

The FAA is proposing this AD to address the incorrect installation of the pitot-static tubing of the first officer's pitot-static system. The unsafe conditions, if not addressed, may affect the capability to drain water or moisture collected in the first officer pitot-static tubing, and may cause malfunction to the system.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2662.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Israel Aerospace Industry Ltd., Service Bulletin 368–34–106, dated August 2024. This material specifies procedures for a visual inspection of the pitot-static rigid tubes, P/N 233T9110–437 and P/N 233T9110–314, and the flexible hoses, P/N BACH30BC06–0097 and P/N BACH30BC05–0111, to determine whether low points exist, and related investigative and corrective actions. The related investigative action is a visual inspection for the installation of the provisions located above the right miscellaneous electrical equipment panel (P37). The corrective actions include replacement of the pitot and the static system tubing connected to the right air data computer, including installation of standoffs, rigid tubes, union fitting, elbow fitting, flexible hoses, and performing functional tests.

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

FAA's Determination

This product has been approved by the aviation authority of another

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 88 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 2 work-hours × $85 per hour = Up to $170	$0	Up to $170	Up to $14,960.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
11 work-hours × $85 per hour = $935	$600	$1,535

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2024–2662; Project Identifier MCAI–2024–00448–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 31, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–300 series airplanes, certificated in any category, that have been modified to a special freighter configuration, in accordance with FAA Supplemental Type Certificate (STC) ST02040SE, and which are listed in paragraph I.A., ''Effectivity,'' of Israel Aerospace Industry Ltd., Service Bulletin 368–34–106, dated August 2024.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a discovery that certain pitot-static tubing of the first officer's pitot-static system was installed incorrectly in the main and mid equipment center during the airplane conversion from passenger to freighter. The FAA is issuing this AD to address the incorrect installation of the pitot-static tubing of the first officer's pitot-static system. The unsafe condition, if not addressed, may affect the capability to drain water or moisture collected in the first officer pitot-static tubing, and may cause malfunction to the system.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD, do a visual inspection of the pitot-static rigid tubes, part number (P/N) 233T9110–437 and P/N 233T9110–314, and the flexible hoses, P/N BACH30BC06–0097 and P/N BACH30BC05–0111, at the locations specified in the Accomplishment Instructions of Israel Aerospace Industries Ltd., Service Bulletin 368–34–106, dated

August 2024, to determine whether low points exist, and, before further flight, do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Israel Aerospace Industries Ltd., Service Bulletin 368–34–106, dated August 2024.

(h) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the Civil Aviation Authority of Israel (CAAI); or the CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(i) Additional Information

For more information about this AD, contact Joe Salameh, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3536; email: *Joe.Salameh@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Israel Aerospace Industries Ltd. Service Bulletin 368–34–106, dated August 2024.

(ii) [Reserved]

(3) For Israel Aerospace Industry Ltd. material identified in this AD, contact Israel Aerospace Industries, Ltd., Ben-Gurion International Airport, Israel 70100; telephone 972–39359826; email *tmazor@iai.co.il.*

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

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

Issued on December 11, 2024.

Victor Wicklund,

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

[FR Doc. 2024–29619 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545

[BOP–1178]

RIN 1120–AB78

Inmate Financial Responsibility Program: Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice of proposed rulemaking would update and streamline regulations regarding the Inmate Financial Responsibility Program (IFRP).

DATES: Written comments must be postmarked and electronic comments must be submitted on or before February 18, 2025. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: If you wish to provide comment regarding this rulemaking, you must submit comments, identified by the agency name and reference Docket No. BOP 1178, by one of the two methods below.

Federal eRulemaking Portal: https://www.regulations.gov. Follow the website instructions for submitting comments. The electronic Federal Docket Management System at *www.regulations.gov* will accept electronic comments until 11:59 p.m. Eastern Time on the comment due date.

Mail: Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Rules Administrator, Legislative and Correctional Issues Branch, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534. To ensure proper handling, please reference the agency name and Docket No. BOP 1178 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel/Rules Administrator, Federal Bureau of Prisons, at the address above or at (202) 353–4885.

SUPPLEMENTARY INFORMATION: Please note that all comments received are considered part of the public record and generally will be made available for public inspection online at *www.regulations.gov*. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want 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 contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted *www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

The purpose of the Inmate Financial Responsibility Program (Program or IFRP), operated by the Bureau of Prisons (Bureau) since 1987, is twofold: to encourage federal inmates in Bureau facilities to pay financial obligations; and to support federal inmates in developing financial planning skills.

Inmate participation in the IFRP is non-compulsory. Subject to certain exemptions listed in 28 CFR 545.10, all sentenced federal inmates are eligible to participate. During an inmate's initial classification, current Bureau policy requires staff to review the inmate's financial obligations—by consulting the inmate's presentence investigation report, judgment and commitment order(s) and other court documents, and any other available information—and

encourage inmates to satisfy any court-ordered obligations either at the time of this initial review or throughout the inmate's term of imprisonment. The Bureau strongly recommends that all inmates with financial obligations participate in the IFRP, along with other programs and activities designed to reduce recidivism, such as work, education, and drug rehabilitation programs.

If an inmate chooses to participate in the IFRP, Bureau staff will work with the inmate to develop a financial plan, which is documented and signed by the inmate and includes financial obligations paid in the following order of priority:

1. Special assessments imposed by the court under 18 U.S.C. 3013;
2. Court-ordered restitution, including assessments related to bodily injury to victims occurring as a result of the offense, loss or destruction of victim property, or other assessments as indicated by the court;
3. Fines and court costs;
4. State or local court obligations (such as child support or alimony, as documented by a court order or letter from the relevant state authority);
5. Other federal government obligations (including fees imposed under 18 U.S.C. 4001 for Cost of Incarceration, other judgments in favor of the United States, student loans, Veterans Administration claims, tax liabilities, and Freedom of Information or Privacy Act fees).

Given the importance of satisfying outstanding financial obligations and reducing the amount of debt upon release, there are effects of non-participation. Documented refusal by inmates to participate in the IFRP, or to comply with the provisions of their agreed-upon financial plan, results in the specific consequences currently listed in 28 CFR 545.11(d), including notification to the Parole Commission, preclusion of furlough eligibility (other than emergency or medical furlough), preclusion of certain pay benefits or increases, preclusion of eligibility for premium work opportunities and/or removal from a UNICOR work assignment, commissary spending restrictions, loss of release gratuity (unless approved by the warden), and loss of incentives (such as early release and financial awards) otherwise available to an inmate who participates in residential drug treatment programs.

As the IFRP is currently operated, Bureau staff review and reassess each inmate's financial plan and IFRP payments during the inmate's regularly scheduled program review meeting; these meetings generally occur every 180 days, although the interval becomes 90 days when the inmate is within 12 months of release. As part of that review, Bureau staff first review the total funds deposited into the inmate's commissary account over the previous six-month period from any source. As stated in 28 CFR 506.1, individual inmate commissary accounts allow the Bureau to maintain inmate monies while the inmate is incarcerated. Funds in inmate accounts can come from a number of sources: the inmate may earn pay from work assignments (including compensation earned through UNICOR); family members or friends may send funds to the inmate; the inmate may receive tax refunds or other government-related issuances; or the inmate may receive other types of income (such as stock dividends, state benefits, litigation settlements, and inheritance). All money earned by the inmate from the Bureau is automatically deposited into the inmate's commissary account.

Next, to determine whether future payments under the IFRP plan should be adjusted based on the inmate's financial activity over the previous six-month period under review, staff subtract the total amount of any payments an inmate has made during the previous six-month period under the IFRP plan (payments made toward the inmate's financial obligations) from the amount deposited into the account over that same time period. Under current regulations in 28 CFR 545.11(b), when performing this calculation to determine the amount an inmate has available for payment of financial obligations, staff must also subtract a $75 per month allowance for telephone communication (a total of $450 for each six-month period). That amount is not included in the calculation of the total amount an inmate has available for payments under the IFRP.

Then, based on the foregoing information, staff estimate the amount the inmate is likely to have remaining at the end of that six-month period. Based on that amount, staff determine whether to adjust the inmate's financial plan and IFRP payments. Under the current regulation, the minimum payment for inmates who do not have a UNICOR work assignment, or who have a UNICOR grade 5 work assignment, is ordinarily $25 per quarter. For inmates assigned a UNICOR work assignment with a grade between 1 and 4, the minimum payment is ordinarily expected to be 50 percent of the inmate's pay.

On January 10, 2023, the Federal Bureau of Prisons (Bureau) published a notice of proposed rulemaking (the ''January 2023 NPRM'') in the **Federal Register** relating to the Inmate Financial Responsibility Program (IFRP). 88 FR 1331 (Jan. 10, 2023). In the January 2023 NPRM, the Bureau detailed its proposed changes to the IFRP regulation. Among the most significant changes were a requirement that all inmates participating in IFRP contribute a percentage of their pay towards the IFRP payment process; a requirement that all inmates participating in IFRP contribute 75 percent of funds received from non-Bureau sources (''outside'' or ''community'' deposits) toward the IFRP payment process; and changes to the effects of IFRP non-participation, including noting that, as per Program Statement 5410.01, *First Step Act of 2018—Time Credits: Procedures for Implementation of 18 U.S.C. 3632(d)(4),* participation is a Productive Activity as that relates to First Step Act (FSA) Time Credits, as described in 18 U.S.C. 3624 and 3632(d)(4), and 28 CFR 523.40 through 523.44.

During the notice and comment period for the January 2023 NPRM, the Bureau received more than 1,300 comments from members of the public, including inmates, inmates' families and friends, advocacy organizations, and governmental officials. The large volume of comments received demonstrated to us that changes to the IFRP are of significant interest to the public. To ensure we obtain the benefit of the public's comments on additional suggested revisions to the IFRP, the Bureau now publishes this supplemental notice of proposed rulemaking (SNPRM). While the provisions proposed in this SNPRM maintain some features of the January 2023 NPRM, it differs in several material respects. The Bureau welcomes public comment on this alternative IFRP framework that considers an individual inmate's financial circumstances. Comments submitted on the January 2023 NPRM should not be resubmitted as new comments to this SNPRM. All relevant comments on the January 2023 NPRM and this SNPRM will be addressed when a final rule is issued.

Supplemental Proposed Rule

This supplemental proposed rule would make changes to update, streamline, and clarify IFRP regulations in sections 28 CFR 545.11(a) through (d), as follows:

Proposed Changes to 28 CFR 545.11(a)

The current IFRP regulation provides that an inmate's financial plan will include the following obligations, ordinarily paid in the priority order as listed: (1) special assessments under 18 U.S.C. 3013; (2) court-ordered

restitution; (3) fines and court costs; (4) state or local court obligations; and (5) other federal government obligations. The January 2023 NPRM did not propose any alteration to this list of obligations. In this SNPRM, the Bureau is proposing to modify this list by altering paragraph (4) to read ''child, spousal, or other familial support obligations,'' and adding a new paragraph (6) for ''other (non-family support) state or local court obligations''.

As initially proposed in 1986, no state or local financial obligations were included in the list of financial obligations collectible through IFRP. *See* NPRM, Control, Custody, Care, Treatment and Instruction of Inmates, Financial Responsibility Program, 51 FR 42167–01 (Nov. 21, 1986). However, in response to public comments received on the initial proposed rule, the Bureau added ''other court ordered obligations'' to the list:

> We agree with several commenters who suggested the Bureau add family financial obligations and child support to its priority list of obligations. Based on public comment, and because court-ordered child support or alimony or other court-ordered judgments against an inmate are financial obligations similar to those in the proposed rule, the Bureau of Prisons is adding new § 545.11(a)(6), other court-ordered obligations.

Final Rule, Control, Custody, Care, Treatment and Instruction of Inmates; Inmate Financial Responsibility Program, 52 FR 10528–01 (Apr. 1, 1987). In 1991, the Bureau published a final rule that combined two categories of obligations into one (''other federal government obligations''), adjusted the paragraph numbering, and adopted the verbiage (''State or local court obligations'') that it has continued to use to the present. Final Rule, Control, Custody, Care, Treatment and Instruction of Inmates; Financial Responsibility Program, 56 FR 23476–01 (May 21, 1991).

The Bureau believes that disaggregating familial support obligations from other state and local obligations is beneficial for several reasons. First, it will allow for the prioritization of family support over other types of state and local obligations in the way initially contemplated. The Bureau believes that it is more important that—to the extent an inmate's money is being sent to a state or local entity—it should go first towards supporting children or others for whom an order of support has been entered, rather than the state or local government for other purposes. Second, the Bureau (as a federal agency) believes that other federal obligations should be prioritized over non-family support state and local obligations, such as criminal fines and fees or fees imposed in civil cases or administrative proceedings.

Third, the Department of Justice in an April 2023 Dear Colleague Letter noted that, in certain circumstances, unjust imposition and enforcement of fines and fees violate the civil rights of adults and youth accused of felonies, misdemeanors, quasi-criminal ordinance violations, and civil infractions.[1] State and local fines and fees make up a miniscule portion (as of February 2024, less than one half of a percent) of the financial obligations subject to collection through IFRP. Nevertheless, as a Department component, the Bureau wants to ensure that it is operating consistent with the Department's guidance on this topic, and is not collecting fines and fees imposed by states and localities in ways that may have violated the civil rights of those in Bureau custody. The Bureau will provide more specific guidance to Bureau employees, in the program statement implementing this regulation, on how to ensure that a fine or fee imposed by a state or local entity was lawfully imposed, such as verifying that an ability-to-pay determination was conducted. Fines and fees that that BOP determines were unfairly or improperly imposed will not be collected through IFRP. The Bureau welcomes public comment on what steps the Bureau should take to ensure that fines and fees imposed by states and localities were not done so in a way that is inconsistent with the constitutional and statutory provisions described in the Dear Colleague Letter. Given that these same concerns are not present in the familial support context, it makes sense to separate those types of obligations as their own category not subject to this guidance.

Proposed Changes to 28 CFR 545.11(b)

1. *Introductory paragraph.* The Bureau still intends to make the two changes to the introductory paragraph that were detailed in the January 2023 NPRM. These changes were: (1) the deletion of language that was intended to serve as guidance for Bureau employees, and (2) the addition of language requiring that any payment plan laid out in the inmate's judgment and commitment order (J&C) be implemented as the inmate's IFRP payment plan.

One purpose of the IFRP is to promote inmate financial understanding and self-regulation. To meet that goal, staff work with inmates to structure a reasonable payment plan that is attainable for the inmate, in light of any funds coming into the account (whether from inmate work assignment pay or through outside sources) and any reasonable expenditures required by the inmate. As discussed in this SNPRM, BOP is proposing to retain a version of the monetary set-aside that is part of the current regulation, without tying it to a monthly amount or to a specific purpose (*e.g.,* phone calls).

2. *Addition of language regarding one-time payment.* In this SNPRM, the Bureau proposes to add language to the rule that (1) encourages all inmates to make a payment towards fully satisfying their financial obligation(s) at the time of initial classification and program review; and (2) would require inmates with commissary account balances above $250 to make a one-time payment. This proposal differs from the January 2023 NPRM in an important way. While the January 2023 NPRM encouraged all inmates to make a one-time payment at the time of initial classification, it did not require any inmate to do so. In this SNPRM, inmates with commissary balances greater than or equal to $250 at the time of initial classification would be required to make a one-time payment from available funds in their commissary accounts to satisfy any identified financial obligations. Currently, guidance to Bureau staff notes that in certain circumstances, including when an inmate's total financial obligation is $100 or less, the inmate should be encouraged to make a one-time payment to satisfy that obligation The purpose of this revision is to make clear that all inmates, regardless of the size of the financial obligation, would be encouraged—and in some circumstances required—to make a one-time payment.

The proposed rule would require an inmate with more than a certain amount of money in their commissary account to make a one-time payment equal to a specific percentage of funds in the account:

[1] Dear Colleague Letter (Apr. 20, 2023), available at *https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf.*

TABLE 1

Commissary account balance	Percentage deducted for one-time initial payment
$0.01–$249.99	0%.
$250.00–$5,000.00	50% of the amount between $250 and $5,000.
$5,000.01 or more	50% of the amount between $250 and $5,000 plus 100% of the amount above $5,000.

As depicted in the above chart, inmates with $249.99 or less in their commissary accounts would not be required to make an initial payment toward financial obligations. An inmate with between $250.00 and $5,000.00 in their account would be expected to pay 50 percent of the amount within that range towards IFRP. Finally, inmates with $5,000.01 or more in their accounts would be expected to pay (1) 50 percent of the amount between $250.00 and $5,000.00, and (2) 100% of the amount in excess of $5,000.00 toward financial obligations. In determining these account balance thresholds, the Bureau reviewed data on commissary account balances, which showed that the overwhelming majority of inmates maintain balances of $1,000 or less. In fact, as of December 4, 2024, approximately 77 percent of commissary account balances are $249.99 or less, and only 2 percent of commissary accounts have balances greater than $5,000.

The way this is intended to work is illustrated through the following examples:

Example 1: Inmate John Doe, who owes a $100 special assessment imposed pursuant to 18 U.S.C. 3013, and federal restitution of $5,000, attends his initial classification and program review meeting with a commissary account balance of $150. He would not be required to make an initial IFRP payment, although he may choose to do so if, for example, he wants to fully pay off his $100 special assessment.

Example 2: Inmate James Roe, who also owes a $100 special assessment imposed pursuant to 18 U.S.C. 3013, and federal restitution of $5,000, attends his initial classification and program review meeting with a commissary account balance of $500. He would be required to make a one-time IFRP payment of $125 (50% of the amount above $250), although as with John Doe, he may also pay more at this time if he chooses. This would leave James Roe with an account balance of $375.

Example 3: Inmate Jane Smith also owes a $100 special assessment imposed pursuant to 18 U.S.C. 3013, and federal restitution of $5,000. She attends her initial classification and program review meeting with a commissary account balance of $6,000. She would be expected to pay a total of $3,375 (50% of the amount between $250 and $5,000 ($2,375), plus $1,000—the amount in her account in excess of $5,000).

Because inmate financial plans developed under the IFRP focus on incoming deposits into the inmate's commissary account, part of the intent of this provision is to prevent the inmate from accumulating a significant account balance prior to initial classification and program review, and then using that large initial balance to evade making any future payments. Initial classification and program review is the first opportunity Bureau staff have to assess an inmate's financial obligations and available resources. While for some inmates this will occur relatively quickly after they enter Bureau custody, other inmates may have spent substantial time in Bureau custody pre-trial and accumulated significant funds in their commissary account. Similarly, inmates may enter Bureau custody following sentencing with a significant deposit or deposits made before their initial classification and review meeting occurs.

The Bureau recognizes that newly sentenced and designated inmates need to maintain some funds to aid in the transition into custody, including by maintaining family contact and purchasing commissary items that may help ease that transition. Thus, the proposed rule would not require an initial payment from inmates with less than $250 in their commissary accounts, and would apply a 50 percent deduction to amounts in excess of $250, up to $5,000. Inmates would still be left with funds for purchases, while also learning that payment of financial obligations based on their financial means is an expected part of their term of imprisonment and that they would not be permitted to maintain significant balances (in excess of $5,000) and stay in compliance with IFRP. It is also important to note that nothing in this proposed rule would prevent an inmate from making a larger payment than would be required under the proposed rule. Rather, the intent of the proposed rule is to set a minimum expectation for payment of financial obligations.

The Bureau believes that setting the threshold for this initial payment at a $250 commissary account balance adequately protects the ability of inmates in custody at Bureau facilities to maintain contact with members of the community and purchase supplementary items from institution commissaries.[2] The proposed rule is also focused on the account balance at the time of the initial program review meeting, meaning (particularly for pre-trial inmates) the inmate may have already purchased and banked phone minutes, or minutes used to access the electronic messaging (TRULINCS). They may also have purchased items from the commissary that they still have, including non-consumable items like shoes, an MP3 player, or a locker organizer.

Using Mr. Roe as an example, the $375 remaining in his commissary account following his initial IFRP payment would be enough to purchase (all prices current as of October 29, 2024, except where noted):

[2] In accordance with BOP Program Statement 4500.12, *Trust Fund/Deposit Fund Manual,* each Bureau facility establishes its list of items to sell in the commissary. Consumable items and medical items sold shall complement, not supplement, diet and medical care provided to the inmate population. These examples are provided for illustrative purposes only. Commissary price lists are available on each BOP facility's public website.

TABLE 2

Expenditure	Total cost
1,800 phone minutes for domestic calls [3]	$108 ($.06/minute).
500 minutes of access to TRULINCS public messaging service	$25 ($.05/minute).
Commissary purchases at FCI Lompoc I, to include: —radio ($31.25) & earbuds ($5.15). —stamps ($12.60/book). —alarm clock ($9.95). —shower shoes ($1.95). —sunglasses ($5.95). —combination lock ($7.65). —foot powder ($2.70). —ibuprofen ($2.60). —thermal mug ($4.00).	$83.80.
Total Cost	$216.80
Remaining Account Balance	$158.20

Even with these purchases, which includes a purchase of the maximum number of minutes Mr. Roe could spend on the phone over the next six months, he still would have $158.20 remaining of his initial $500 balance to either save, or spend on additional commissary items (including snacks and hobbycraft materials). And, going forward, his account balance would be supplemented by any pay received for a work assignment or additional deposits made from outside sources.

The Bureau is sensitive to the fact that this initial period of time at a designated institution can be a significant adjustment for many in its custody. Accordingly, the Bureau specifically invites comment on the $250 threshold from the public, and will consider responses received on this issue in formulating its final rule.

3. *Revision of language regarding payment plans.* The Bureau also proposes to modify language included in the current rule indicating that the minimum payment for inmates who do not work in UNICOR positions and those who work in UNICOR positions at the grade 5 level would be $25 per quarter, and that inmates assigned to UNICOR grades 1 through 4 work assignments would be expected to allot 50% of their monthly pay to IFRP payments.

In the January 2023 NPRM, the Bureau proposed implementing IFRP payment plans that would require (1) inmates in UNICOR work assignments grade 1 through 4 to allot 50 percent of their monthly pay to the IFRP payment process; (2) inmates in non-UNICOR and UNICOR grade 5 work assignments to allot 25 percent of their monthly pay to the IFRP payment process; and (3) all inmates to pay 75 percent of deposits placed in their commissary account by non-institution (community) sources toward the IFRP payment process. In this SNPRM, the Bureau is still proposing to require that inmates make IFRP payments from both sources of funds (pay for work and commissary deposits). However, this SNPRM features the following proposals:

- The regulation would indicate that, in the absence of some other court-ordered payment plan, inmates would be expected to allot 10% of pay (to include performance pay, bonus pay, and special bonus pay) received from any work assignment, whether institution or UNICOR, toward the IFRP payment process.
- The regulation would also clarify that all inmates, in the absence of some other court-ordered payment plan, would be expected to allot a specific percentage of each deposit from non-institution (community) resources to the IFRP payment process. The percentage that the inmate would be expected to allot will be adjustable, and would be based on the total amount of funds deposited into the inmate's commissary account over the prior six months.
- Inmates with six-month deposit totals below a certain amount, and whose account balances are also below a certain amount, would be exempt from the required percentage.
- Inmates who accumulate significant account balances, which the Bureau defines as a balance equal to or greater than $5,000, would be expected to allot all amounts in their accounts in excess of $5,000 to the IFRP payment process.

Further, the regulation would explain that exceptions to the stated allotments must be approved by the inmate's unit manager, in consultation with the associate warden of the inmate's institution, and documented in writing.

Changes to Pay

This SNPRM proposes a specified percentage—10 percent—of inmate pay for work assignments that would be allotted towards the IFRP payment process. This percentage would apply to all inmate work assignments, including UNICOR, and to all forms of compensation received for work, including hourly pay and bonuses. As is currently done for UNICOR pay for IFRP-participating inmates, the percentage deduction would be made prior to the disbursement of pay to individual inmate trust accounts.

The Bureau believes it is important that all inmates who are able to work have some of their pay remitted toward payment of their financial obligations. As a reentry tool, this obligation helps establish the expectation that earning income carries the requirement that one contribute financially to certain societal and personal obligations.[4] Outside the Bureau, these contributions might take the form of payroll taxes, garnishments for child support, or other deductions. By introducing the concept of a ''payroll deduction'' for *all* IFRP-participating inmates, this would ensure that all inmates who can work are making some consistent contribution, even a small one, to their financial obligations.

[3] Rates effective as of January 1, 2025. BOP policy generally limits inmates to 300 minutes of phone time per month. See BOP Program Statement 5264.08, *Inmate Telephone Regulations,* p.9. An additional 100 minutes are permitted during the months of November and December, and individual calls are limited to 15 minutes. *Id.* Pursuant to the First Step Act of 2018, codified in pertinent part at 18 U.S.C. 3632(d)(1)(A), inmates in Bureau custody who are successfully participating in evidence-based recidivism reduction programming receive up to 510 minutes of phone time per month. These inmates are not subject to the 300-minutes per month limit, and they are not required to pay for these minutes.

[4] Additionally, on November 8, 2023, the Bureau published a notice of proposed rulemaking in the **Federal Register** proposing to modify regulations on compensation for inmate workers in accordance with Section 605(c) of the First Step of 2018 (FSA), Public Law 115–391, December 21, 2018, 132 Stat. 5194. The proposed amendments to the regulations governing UNICOR and performance pay would require that 15 percent of an inmate's pay be reserved (*i.e.,* encumbered) to assist the inmate with costs associated with release from prison. 88 FR 77064.

Changes to Assessment of Outside Deposits

The most significant difference between this SNPRM and the January 2023 NPRM is how ''outside'' or ''community'' deposits into the inmate's commissary account will be considered for IFRP purposes. Currently, the IFRP regulation permits Bureau staff to ''consider'' these deposits in developing the inmate's financial plan, but a lack of more specific guidance has resulted in disparate application and widespread use of a $25/quarter minimum payment option. In this SNPRM, the Bureau proposes specific guidance for both Bureau staff and inmates for how any outside deposits would be assessed for IFRP financial planning purposes. The essence of the system proposed in this rulemaking is that those inmates who have more funds would be expected to pay more of each ''outside'' deposit toward their financial obligations.

Under this proposed rule, Bureau staff reviewing an inmate's IFRP participation would review the total value of deposits placed into the inmate's account over the past six months. Depending on that total value, a specific percentage of each *future* deposit received would be paid toward IFRP. The specific percentages are reflected in the chart below:

TABLE 3

Total value of deposits over prior six months	Percentage of future outside deposits deducted and paid toward IFRP
$.01–$249.99	0% if account balance is $249.99 or smaller. 25% if account balance is $250 or larger.
$250–$999.99	25%.
$1,000–$2,499.99	35%.
$2,500–$4,999.99	55%.
≥$5,000	100%.

As noted previously, in developing this SNPRM the Bureau reviewed commissary account data, and determined that setting these thresholds would best balance the competing interests discussed in this SNPRM. Under this SNPRM, inmates who receive no deposits or deposits less than $249.99 over a six-month period, and who have account balances of $249.99 or less, will not be required to pay any percentage of their outside deposits toward IFRP until such time as their payment plan is re-assessed (*i.e.,* generally during their next program review). An inmate in this category who receives a $1,200 outside deposit while his 0% financial plan is in effect will not be required to pay any of that deposit toward IFRP. However, when his plan is re-assessed during his next program review, he will then fall into the $1,000–$2,499.99 category based on his deposit activity over the prior six months, and 35 percent of outside deposits he receives going forward—regardless of the size of each individual deposit—will be paid toward his financial obligations.

The way this system works is further illustrated in the following examples:

Example 1: Inmate John Doe, who owes federal restitution, attends his regularly scheduled program review. During this review, his Case Manager reviews Bureau systems to determine (1) the total amount deposited into Mr. Doe's commissary account over the prior six months; and (2) Mr. Doe's commissary account balance.

The Case Manager's review indicates that Mr. Doe has a current commissary account balance of $600, as well as deposits over the prior six months of $600 ($100/month). Thus, his IFRP payment obligation would be 25 percent of each outside deposit he receives while this payment plan is in effect. After Mr. Doe agrees to this financial plan, the Case Manager would enter this financial plan into the Bureau's SENTRY system. While this financial plan is in effect, every time a deposit is made to Mr. Doe's commissary account, 25 percent would be withheld and paid toward his restitution obligation.

Example 2: Inmate Jane Smith, who also owes federal restitution, attends her program review meeting. Her Case Manager determines that Ms. Smith has an account balance of $200, as well as total deposits over the prior six months of only $100. Thus, Ms. Smith's financial plan would reflect that no percentage would be withheld from outside deposits she receives while the financial plan is in effect.

Example 3: Inmate William Brown, who owes a federal assessment, has $0 in deposits into his account over the previous six months. He attends his program review meeting, and has a commissary account balance of $300. Because his account balance is greater than $250, his payment plan will specify that 25 percent of each future outside deposit will be paid towards IFRP. While this plan is in effect, Mr. Brown receives a $1,200 tax refund deposit; $300 of this deposit will be paid toward his federal assessment through IFRP.

Example 4: Inmate James Roe, who owes a federal tax debt, has been on a 0% payment plan for multiple cycles because he receives less than $249.99 in deposits every six months, and his account balance is less than $250 at the time of his program review. While this plan is in effect, Mr. Roe receives a deposit of $5,000 from an inheritance, all of which he keeps. At his next program review, however, Mr. Roe's payment plan will be adjusted so that 100 percent of each outside deposit he receives, until such time as his financial plan is modified again or he satisfies his financial obligation, will be paid toward IFRP.

In each of these examples, the inmates' financial plans would also indicate that 10 percent of their work compensation would be paid toward the IFRP payment process.

The Bureau's intent in making this revision is to try to require inmates with greater financial resources to pay more toward their financial obligations. Admittedly, this system is not perfect. This proposal uses past deposit history to set a percentage of future deposits taken for IFRP. The Bureau elected to focus on total value of deposits (rather than account balances) because the total deposits figure more accurately depicts the individual inmate's financial circumstances and because it is already reported by the Bureau's SENTRY system and used as part of the current IFRP system to develop payment plans. If IFRP was designed around account balances, there would be a significant incentive for inmates to spend down their account balances in advance of the time at which their financial plan is established or reviewed, in order to evade financial responsibility obligations. Instead, by utilizing the total value of deposits, the Bureau will

be relying on a figure that gives the complete picture of how much money the inmate has available to spend, including on satisfying their financial obligations.

As the Bureau explained in its January 2023 NPRM, it faces significant technological, administrative, and other challenges in establishing any kind of variable-rate system. The Bureau considered a system similar to progressive taxation, which would apply a lower marginal rate to amounts below a certain threshold, and higher marginal rate to amounts above that threshold. This type of proposal would offer several benefits. It would allow the Bureau to target large account balances while still preserving a minimum amount of funds for an inmate's daily and future use. It is also more equitable, recognizing that an inmate with an account balance of $100 and minimal incoming deposits is differently situated than one with an account balance of $10,000 or one with numerous deposits.

However, the Bureau also determined that there were significant technological, administrative, and other disadvantages associated with this alternative approach. First, there is the risk that inmates might maintain deliberately small account balances through unlawful or illegitimate means (including having money held by other inmates), or otherwise engage in ''structuring'' of deposits and other transactions, to avoid paying a higher percentage toward IFRP. In addition, a system that set cut points based on the balance in an inmate's account presented the risk of unfairness by treating inmates with similar balances differently. For example, an inmate whose account balance totaled $499 might be expected to pay 25 percent of future deposits towards IFRP, while an inmate whose account balances totaled $500.01 might be expected to pay 50 percent of community deposits towards IFRP.

A ''progressive'' system tied to deposit amounts could mitigate this latter concern. For instance, such a system might set a marginal rate of 25% for the first $500 in community deposits during a time period, with a rate of 75% for any deposits over $500 during the same span. In that scenario, an inmate who deposited $500 in a 365-day period would pay $125 (25% of the $500). An inmate who deposited $501 in a 365-day period would pay $125.50 (25% of the first $500, and 75% of the amount—$1—over $500).

This solution, however, brings technological and administrative challenges for the Bureau. The Bureau lacks a fully automated process to ''freeze'' funds or make IFRP withdrawals from an inmate's account, which prevents the Bureau from implementing any plan that would automatically adjust amounts withheld from individual deposits as the amount in the account increases or decreases, or an individual deposit is above or below a certain point. With the number of deposits received by the Bureau each day, the Trust Fund system would have to query each individual account, its balance or deposit history, the inmate's IFRP status, and tie that to a specific percentage of the deposit to withhold. Under the current IFRP model, an individual inmate's IFRP financial plan is first manually entered by a unit team member, and payments are withdrawn and paid to the correct payee by a Trust Fund staff member pursuant to the terms of the financial plan the inmate has agreed to. In developing the financial plan, unit team staff look at the prior 180 days of financial activity in the inmate's account to determine what percentage the inmate would be expected to pay; the inmate then signs the financial plan and agrees to abide by that plan until the next review. If the financial plan involved variable rates of withholding of deposits, it would be more difficult for both Bureau staff to explain and for inmates to understand what they would be paying.

This SNPRM tries to strike a middle ground between setting a single, flat rate that applies to all inmates regardless of their financial means, and a highly sophisticated system that would automatically adjust withholding amounts based on various factors (*e.g.,* account balance, total sum of deposits over a specific period). Under the proposed rule, most inmates would keep a majority of their outside deposits; only those inmates who receive significant deposits (*e.g.,* $2,500 or more over a six-month period) would be assessed at a rate of 55 percent or higher. The Bureau plans to engage in significant notification and educational efforts for parties impacted by these IFRP changes when it issues its final rule and associated implementing policy. As part of those efforts, the Bureau anticipates informing members of the public (including ''outside'' depositors) that funds deposited into the account of an IFRP-participating inmate may be paid toward the inmate's financial obligations, in accordance with the terms of the inmate's agreed-to IFRP payment plan.

Importantly, financial plans are subject to review and adjustment at a minimum during every program review meeting. Accordingly, an inmate who receives a single large deposit may see their financial plan percentage increase for the next six months. However, once their deposits return to lower amounts, that percentage can be adjusted downward by Bureau staff.

Changes to Set-Aside Amounts

In developing this SNPRM, the Bureau's overarching intent is to establish that inmates with more money are expected to pay more towards their financial obligations. Under the current IFRP regulation, when developing an inmate's financial plan, Bureau staff are required to subtract $450 (*i.e.,* $75 × 6 months, inmate telephone exclusion) from consideration in evaluating the inmate's available financial resources.

This SNPRM would retain a version of the set-aside, but it does not explicitly tie it to telephone use for two reasons. First, Bureau inmates have multiple avenues, including telephone calls, electronic messaging, and video visiting (where available), to maintain contact with family and other members of the community, so restricting the set-aside consideration to just phone calls no longer reflects current realities. Second, the Bureau recognizes that inmates may choose to prioritize other purchases, including, for example, over-the-counter medications purchased from commissary, preferred hygiene products, hobbycraft materials, or materials for college or correspondence courses.

Under the SNPRM, an inmate who receives less than $250 in deposits over the six months prior to program review would generally not be required to pay *any* percentage of their outside deposits towards IFRP. The only circumstance in which this inmate would be required to pay a percentage of his outside deposits is if the inmate has accumulated a commissary account balance of $250 or more at the time of program review. In the Bureau's view, if the inmate has $250 in their commissary account, regardless of their deposit activity over that time period, then the rationale behind the set-aside is satisfied, and the inmate should pay a percentage of his future incoming deposits towards IFRP obligations. Importantly, that percentage would not be 100 percent, except for those inmates who receive more than $5,000 over a six-month period. Inmates who participate in IFRP would be guaranteed to keep a *minimum* of $250, and for all but the most well-off inmates, they would also be entitled to keep a majority of their external deposits in excess of that $250 amount as well.

We will briefly revisit the example of John Doe, who had an account balance of $600 and was placed on an IFRP

payment plan that would withhold 25 percent of future ''outside'' deposits. While that plan is in effect, Mr. Doe receives $100 every month deposited into his account by family members. For each deposit, he would be able to spend $75 on things like phone calls, electronic messaging, and commissary, *in addition to the $600 he already had in his account.* Meanwhile, $25 of each deposit would be paid towards his federal restitution. Given costs for phone calls ($.06/minute, with a limit of 300 minutes per month) and electronic messaging access ($.05/minute), Mr. Doe would have sufficient funds remaining after his IFRP payment is deducted to maintain contact with his family and friends through either of these methods. With respect to commissary spending, Mr. Doe would likewise have sufficient funds to purchase items in the commissary at FCI Lompoc I like aspirin ($1.90), hydrocortisone cream ($1.55), and antifungal foot cream ($2.70).

By exempting inmates with minimal funds (*i.e.,* less than $250) from the requirement regarding outside deposits, inmates will still be able to communicate with family and purchase some commissary items. While inmates with limited financial means may have to make choices about how to spend their funds, the exemption would ensure that they will all have some funds available.

Specific Treatment of High-Value Accounts

In the Bureau's experience, the vast majority of inmates carry commissary account balances of under $5,000. As of November 2024, for example, only two percent of BOP's inmate population of over 158,000 inmates had a commissary account balance of $5,000 or more. This SNPRM proposes to specifically target Bureau inmates who have significant account balances, which the Bureau defines as a balance greater than or equal to $5,000, and who also owe financial obligations. These inmates would be expected to allot all funds in excess of $5,000 held in their commissary accounts towards payment of financial obligations, in addition to 100 percent of all ''external'' deposits received during times when their accounts are at or above that $5,000 threshold.

As previously noted, only two percent of inmates have account balances of $5,000 or above, and an even smaller subset of that percentage owes any financial obligations, and thus would be subject to this provision. By imposing this requirement only on those inmates who maintain significant balances, the Bureau is communicating the expectation that inmates would not be able to use their commissary accounts to shield their funds from being used to satisfy their financial obligations.

Example: Inmate James Roe owes federal restitution of $100,000. He attends his program review meeting with a commissary account balance of $9,000, and deposits over the prior six months totaling $1,000. He would be expected to make a one-time payment of $4,000 (the amount in his commissary account in excess of $5,000), and would be placed on an IFRP payment plan that withholds 10% of his pay and 100% of his outside deposits.

The Bureau recognizes that this approach may lead some inmates who have the available means to seek to deposit their funds in non-Bureau, external accounts. In these circumstances, alternative financial collection methods can be pursued by federal, state, and/or local authorities. This approach may also lead some inmates to decline to participate in IFRP, but that decision would subject them to the consequences of non-participation detailed in 28 CFR 545.11(d).

Proposed Changes to 28 CFR 545.11(c)

In the January 2023 NPRM, the Bureau stated its intention to revise the proposed rule to explain that the inmate's financial plan would be reviewed *at a minimum* during the inmate's program review meeting. This SNPRM keeps this intended revision, and makes clear that the percentage of non-institution (community) resources deducted for IFRP payments may be revised at this time, based on the total value of deposits into the inmate's commissary account over the prior six months. Modifications to an inmate's financial plan may be made at times other than the inmate's program review meeting if, for example, the inmate receives a significant deposit or loses a source of community support.

The Bureau is also interested in receiving comments on the topic of whether an inmate should be exempt from IFRP participation for a certain length of time prior to reentry. For example, the inmate could be exempt from IFRP participation during the 90 or 180 days prior to either (1) the inmate's transition to a residential reentry center or home confinement, or (2) expiration of the inmate's term of imprisonment, if the inmate is not participating in community confinement.

Proposed Changes to 28 CFR 545.11(d)

Paragraph (d) of 28 CFR 545.11 lists the effects of non-participation in the IFRP. In the January 2023 NPRM, the Bureau proposed to revise this paragraph to remove two listed consequences, as they are no longer in use, and to add one new consequence. This SNPRM keeps the changes proposed by the January 2023 NPRM and clarifies how this paragraph will be structured. As detailed below, the Bureau continues to invite comments specifically on the linkage between IFRP and time credits under the First Step Act.

1. *Deletion of language requiring quartering in lowest housing status as an effect of non-participation in IFRP.* First, the Bureau still proposes to remove current paragraph (d)(7), which requires that if an inmate refuses to participate in or comply with the provisions of the IFRP, the inmate be quartered in the lowest housing status available (dormitory or double-bunking, for example).

2. *Deletion of language prohibiting placement in community-based programs as an effect of non-participation in IFRP.* Second, the Bureau still proposes to remove current paragraph (d)(8), which states that if an inmate refuses to participate in or comply with the provisions of the IFRP, the inmate would not be placed in a community-based program.

3. *Relationship between IFRP and Time Credits under the First Step Act.* The Bureau has taken very seriously the comments it received in response to the January 2023 NPRM that expressed concerns that conditioning FSA Time Credits on IFRP participation may take away from the FSA's spirit and intent to encourage individuals in custody to prepare for reentry. However, the Bureau maintains that participation in IFRP demonstrates acceptance of responsibility and is an important step in preparing for reentry. Accordingly, the Bureau has proposed a number of the reforms to the IFRP program described above aimed at minimizing the perceived burden of IFRP participation on those eligible for FSA Time Credits and addresses the concern that participation may leave individuals without necessary resources. These proposed reforms include the exemption of individuals with limited funds ($249.99 or less) from IFRP payments and the newly proposed progressive payment system for outside deposits. We therefore invite additional comments on the relationship between IFRP and FSA Time Credits in light of the Bureau's efforts to address the stated concerns through these and other reforms proposed in this rulemaking.

4. *Conforming amendments.* Finally, the Bureau proposes to renumber current paragraphs (d)(9) and (d)(11) to

paragraphs (d)(7) and (d)(8) respectively; to remove current paragraph (d)(10); which is currently listed as ''reserved''; and to make amendments to redesignate the numbered list in this regulation to conform to the changes described in this proposed rule.

Regulatory Certifications

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

This proposed rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this proposed rule is limited to an existing BOP program that applies to sentenced inmates in the custody of the Federal Bureau of Prisons, and does not apply to inmates in study/observation; pretrial detainees; or inmates in holdover status pending designation.

Executive Order 13132—Federalism

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

Executive Order 12988—Civil Justice Reform (Plain Language)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to specify provisions in clear language. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this proposed rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the program that is the subject of this proposed rule is intended to create any legal or procedural rights enforceable against the United States.

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 $100,000,000 or more in any one year (as adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of inmates committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau's appropriated funds, and the funds held by individuals in Bureau custody who owe the types of financial obligations collectible through this Program. The Department anticipates that changes made by this proposed rule will result in additional monies collected through the Inmate Financial Responsibility Program and paid toward inmates' financial obligations, although the exact amount is unknown; in fiscal year 2023, the total collected from inmates through the Program was in excess of $9.2 million (*https://www.bop.gov/resources/victim_resources.jsp*).

Congressional Review Act

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

List of Subjects in 28 CFR Part 545

Prisoners, Work and Compensation.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, the Bureau proposes to amend 28 CFR part 545 as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

■ 1. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3632, 3663, 3771, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. In 28 CFR 545.11:

■ a. Revise paragraphs (a)(4) and (5);

■ b. Add paragraph (a)(6);

■ c. Revise paragraphs (b), (c), and (d)(7) through (9); and

■ d. Remove paragraphs (d)(10) and (11).

The revisions and additions read as follows:

§ 545.11 Procedures.

* * * * *

(a) * * *

(4) Child, spousal, or other familial support obligations;

(5) Other federal government obligations; and

(6) Other (non-family support) state or local court obligations.

(b) *Payment of financial obligations.* The inmate is responsible for making satisfactory progress in meeting the inmate's financial responsibility plan and for providing documentation of these payments to unit team staff. Ordinarily, a plan for payment of financial obligations set out in the inmate's Judgment & Commitment order (J&C) or other court order should be implemented as the inmate's financial plan. In the event the J&C or other court order does not prescribe a payment plan or schedule, the following will apply.

(1) *Initial classification.* During the initial classification and review of the inmate's financial obligations, unit team staff will also review the inmate's individual commissary account balance, and encourage the inmate to make a payment to satisfy any financial obligations in full. The inmate can make this payment through his/her commissary account or from other financial resources. For a payment made through a non-Bureau resource, the inmate is required to provide documentation of the payment to unit team staff. If the inmate is unwilling or unable to fully satisfy any financial obligation at the time of initial classification and review, the inmate will be required to make a one-time single payment toward his/her financial obligation(s) if his/her commissary account balance is greater than or equal to $250. The amount of this one-time payment will be based on the amount of money in the inmate's commissary account at the time of initial classification and review:

TABLE 1 TO PARAGRAPH (b)(1)

Commissary account balance	Percentage deducted for one-time initial payment
$0.01–$249.99	0%.
$250.00–$5,000.00	50% of the amount between $250 and $5,000.
$5,000.01 or more	50% of the amount between $250 and $5,000 and 100% of the amount above $5,000.

(2) *Financial plans.* For an inmate who is unwilling or unable to make a single payment to satisfy the inmate's entire financial obligation(s) at the time of the initial classification and review, Bureau staff will establish a financial plan for the inmate. These financial plans shall be structured as follows:

(i) *Allotment of institution resources.* The inmate will be required to pay 10 percent of all pay received for an institution or UNICOR work assignment to the IFRP payment process. This includes performance pay, bonus pay, and special bonus pay.

(ii) *Allotment of non-institution (community) resources.* The inmate will be expected to allot a specified percentage of all deposits received from non-institution (community) resources toward the IFRP payment process.

(iii) *Establishing financial plan at program review.* During program review, BOP staff will review the inmate's commissary account balance, and total value of deposits into the inmate's commissary account over the prior six months. Based on the total value of deposits over the prior six months, BOP staff will place the inmate on a financial plan that specifies that a certain percentage of each future deposit from non-institution (community) resources will be deducted and paid toward the IFRP payment process. The specific percentages are reflected in the following table:

TABLE 2 TO PARAGRAPH (b)(2)(iii)

Total value of deposits over prior six months	Percentage of future outside deposits deducted and paid toward IFRP
$.01–$249.99	0% if commissary account balance is $249.99 or smaller. 25% if commissary account balance is $250.00 or larger.
$250.00–$999.99	25%.
$1,000–$2,499.99	35%.
$2,500–$4,999.99	55%.
≥$5,000	100%.

(iv) *Balances greater than or equal to $5,000.* For any inmate who has a commissary account balance greater than or equal to $5,000 at the time of review of the inmate's participation and/or progress in the IFRP, the inmate will be expected to pay all of the amount in the account, in excess of $5,000, toward the IFRP payment process.

(3) *Exceptions to allotment amounts.* Any allotment that differs from that described in part (2) of this subpart must be approved by the unit manager, after consultation with the associate warden, and documented in writing.

(c) *Monitoring.* Participation and/or progress in the IFRP, including the inmate's financial plan, will be reviewed, at a minimum, during an inmate's program review meeting. The percentage of non-institution (community) resources deducted for IFRP payments may be revised at this time, based on the total value of deposits into the inmate's commissary account over the prior six months. Modifications to an inmate's financial plan may be made at times other than the inmate's program review meeting.

(d) * * *

* * * * *

(7) The inmate will not receive a release gratuity unless approved by the warden;

(8) The inmate will not receive an incentive for participation in residential drug treatment programs; and

(9) The inmate will not be eligible to earn or apply First Step Act Time Credits, as described in 18 U.S.C. 3624 and 3632(d)(4), and 28 CFR 523.40 through 523.44.

Colette S. Peters,

Director, Federal Bureau of Prisons.

[FR Doc. 2024–29692 Filed 12–16–24; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AS25

Updates to Waiver of Charges for Copayments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its medical regulations to allow VA to initiate a waiver request for debt accumulated from health care copayments on behalf of veterans in certain circumstances and to remove the requirement that veterans submit VA Form 5655 when seeking a waiver of copayment debt.

DATES: Comments must be received on or before February 18, 2025.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post public comments on *www.regulations.gov* that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment

received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a plain language summary (not more than 100 words in length) of this proposed rule is available at *www.regulations.gov,* under RIN 2900–AS25.

FOR FURTHER INFORMATION CONTACT: Andrew Patrick, Executive Director, Revenue Operations, Office of Finance, (104RO), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington DC 20420, (202) 809–3030. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Authority and Background

Section 1710 of title 38, United States Code (U.S.C.) requires VA to furnish hospital care and medical services, and authorizes VA to provide nursing home care, that VA determines to be needed for eligible veterans. Section 1710 authorizes VA to provide such care only when the veteran agrees to pay the applicable copayment. 38 U.S.C. 1710(f)(1) and (g)(1). Additionally, section 1722A establishes that VA must require a copayment from certain veterans for medications. VA has set forth copayment requirements for inpatient hospital care and outpatient medical care in § 17.108 of title 38, Code of Federal Regulations (CFR), copayment requirements for medication in § 17.110, copayments for extended care services in § 17.111, and copayments for urgent care at § 17.4600. These types of medical copayments are generally referred to as ''copayments'' throughout this rulemaking.

Under 31 U.S.C. 3711(a)(1), Federal agencies are required to ''try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency,'' which means that VA must attempt to collect amounts owed by veterans to VA, including debts arising from copayments. However, VA is authorized to waive recovery of payments or overpayments of benefits, including copayments, when recovery would be against equity and good conscience and an application for relief is made within 180 days from the date of notification of the indebtedness by VA. 38 U.S.C. 5302(a)(1). VA has regulated the waiver of debts arising from medical copayments in 38 CFR 17.105(c). VA has also regulated the process for waiver applications in 38 CFR 1.963(b), the process to request a hearing in § 1.966(a), and the application of the ''equity and good conscience'' standard in §§ 1.965 and 1.966(a).

Explained in more detail below, VA proposes to amend § 17.105(c) to: remove the requirement to submit a particular form when requesting a waiver of charges for copayments; add the ability for VA to initiate waiver requests on behalf of veterans; update VA staff position titles; and clarify the applicability of other regulations related to appeals of VA decisions on the waiver of copayments. These changes would provide clarity within the regulation, be consistent with the statutory authority for collection of copayments and waiver of copayments, reflect the current position title used by VA, and update cross-references to other regulatory sections.

We note at the outset that current § 17.105(c) references only claimants, not veterans. In the proposed changes to § 17.105(c) discussed below, we would include references to both claimants and veterans. We would maintain the existing references to claimants when discussing the process for anyone other than VA to initiate a waiver request for charges of copayments, and we would use the word veteran when discussing the process whereby VA would initiate a request for waiver on behalf of a veteran.

Changes to 38 CFR 17.105(c)

In this rulemaking we propose to amend 38 CFR 17.105(c) related to waivers for copayments. We would first restructure current § 17.105(c) by breaking the single paragraph into proposed subparagraphs (c)(1) through (5), which would retain the majority of the language in current paragraph (c), but the further subparagraphs would make the proposed substantive and technical changes clearer.

The first sentence of current § 17.105(c) introduces the process for requesting a waiver of charges for copayments and states that ''[if] the debt represents charges for outpatient medical care, inpatient hospital care, medication or extended care services copayments made under §§ 17.108, 17.110, 17.111, or 17.4600, the claimant must request a waiver by submitting VA Form 5655 (Financial Status Report) to the Consolidated Patient Account Center (CPAC) Chief Financial Officer.'' We would retain this sentence as a standalone proposed § 17.105(c), with the following revisions.

We would first add the phrase ''urgent care'' to the list of debts from charges for care authorized to be waived. Current § 17.105(c) does not include the phrase urgent care but does include reference to § 17.4600, which addresses copayments for urgent care. Therefore, to ensure a complete and parallel listing of all applicable care types, we would add the phrase ''urgent care'' to qualify § 17.4600.

We would then add language in proposed § 17.105(c) to establish that VA may initiate a waiver request in addition to a ''claimant.'' This change would be necessary because VA recognizes that situations may arise where it would be more equitable and efficient for VA staff to initiate waiver requests on behalf of veterans. We would not propose to list specific situations in which VA may initiate a waiver, so that VA may retain greater flexibility in assessing what we believe would be novel circumstances. However, one example for when VA might initiate a waiver request would be in cases of VA error, particularly when large groups of veterans are impacted by the same VA error or errors.

Proposed § 17.105(c) would remove the requirement in current § 17.105(c) that claimants must submit VA Form 5655 to request a waiver of charges of copayments. VA Form 5655 is a two-page form that requires each claimant provide detailed information regarding monthly expenses, debts, and other financial information. VA now finds that this level of specificity can be burdensome to the claimant and is often more information than VA requires to make a waiver determination. VA would still regulate other criteria for submission of waiver requests, but the requirement would be moved to proposed § 17.105(c)(1).

Lastly, proposed § 17.105(c) would move the requirement that the form be sent to the Chief Financial Officer to § 17.105(c)(1)(ii), and in that provision, change the position title from ''Chief Financial Officer'' to ''Chief Fiscal Officer'' to reflect the current position title. This is merely a technical change and would not change the process to submit a waiver or to whom the request is submitted.

For the reasons stated above, proposed § 17.105(c) would read: ''*Of charges for copayments.* If the debt represents charges for outpatient medical care, inpatient hospital care, medication, extended care services, or urgent care copayments made under §§ 17.108, 17.110, 17.111, or 17.4600, either a claimant or VA may initiate a waiver request.''

Proposed § 17.105(c)(1) would establish requirements for claimants to submit requests for waiver of charges of copayments. Proposed paragraph (c)(1) would establish introductory language to state ''[i]f the claimant requests a

waiver, the claimant must:'' where proposed subparagraphs (c)(1)(i)–(iv) would establish the specific criteria for a waiver request.

The criteria in proposed paragraphs (c)(1)(i), (ii), and (iv) would remain the same as those listed in current § 17.105(c), with the exceptions of the requirement to submit VA Form 5655 and changing the title of the CPAC Chief Financial Officer to the Chief Fiscal Officer.

Proposed § 17.105(c)(1)(i) would establish that claimants must make the request within the time period provided in § 1.963(b) of this chapter. This is identical to the submission timeframe in current § 17.105(c) as VA finds it is still sufficient for purposes of waiver requests for copayments.

Proposed § 17.105(c)(1)(ii) would establish that claimants submit the request for waiver in writing to the Consolidated Patient Account Center (CPAC) Chief Fiscal Officer. We reiterate that removing the requirement for every claimant to submit VA Form 5655 would reduce burden for most claimants and eliminate requests for information that is not relevant for VA to determine whether to grant waiver requests. Therefore, as we would no longer be requiring a certain form, we would state that the request must be in writing in accordance with §§ 1.911(c)(2), 1.912(c)(2) and 1.912a(c)(2). As discussed below, the proposed removal of the requirement to submit VA Form 5655 would not prevent VA from requesting VA Form 5655, or other information, from a claimant after submission of the initial waiver request if, in the course determining whether a waiver will be granted, VA determines more information is needed to make a waiver determination.

To ensure that VA has the information required to make determinations related to waiver requests, proposed § 17.105(c)(1)(iii) would state that claimants must provide any additional information that VA may request to determine whether the waiver request will be granted. This requirement is not expressly stated in current § 17.105(c), but is consistent with VA practice.

Proposed § 17.105(c)(1)(iv) would direct claimants to request a hearing under § 1.966(a) of this chapter if a hearing is desired. This requirement is identical to what is stated in current § 17.105(c), as VA finds it is still sufficient for purposes of waiver requests for copayments.

Proposed § 17.105(c)(2) would establish requirements for VA to submit requests for waivers on behalf of veterans. VA believes that in certain circumstances it would be beneficial to veterans and VA if VA were permitted to submit requests for waivers on behalf of veterans. Proposed paragraph (c)(2) would provide that when VA requests a waiver on behalf of a veteran, VA would meet the criteria further outlined in proposed paragraphs (c)(2)(i)–(iv). The criteria in proposed § 17.105(c)(2)(i)–(iii) would essentially mirror the criteria required of claimants under proposed (c)(1)(i), (ii), and (iv). The waiver request requirements in proposed § 17.105(c)(2)(i)–(iii) are again substantively the same as those stated in current § 17.105(c), with the exceptions of the requirement to submit a particular VA form, and the change in title of the CPAC Chief Financial Officer to the Chief Fiscal Officer.

Proposed § 17.105(c)(2)(i) would state that VA must make the request within the time period provided in § 1.963(b) of this chapter, and proposed paragraph (c)(2)(ii) would direct VA to submit the waiver request to the designated CPAC Chief Fiscal Officer. Both of these requirements are consistent with what is stated in current § 17.105(c) and proposed paragraphs (c)(1)(i) and (c)(1)(ii), in terms of requirements for claimants' submission of waiver requests.

Proposed § 17.105(c)(2)(iii) would establish that VA must notify the veteran in writing that a request has been made on their behalf and that the veteran may request a hearing pursuant to § 1.966(a). The proposed requirement that VA notify the veteran when a waiver request has been initiated on their behalf is not in current § 17.105(c) because the process for VA to do so is newly proposed in this rulemaking. However, VA would ensure that the veteran is notified, in writing, so that way veterans are aware that VA has initiated a waiver request for the debt and that the veteran has the right to a hearing on the request under § 1.966(a).

Proposed § 17.105(c)(2)(iv) would state that VA may request any additional information from the veteran that may be required to determine whether the waiver will be granted. Although this requirement is also not stated in current § 17.105(c), it reflects current VA practice, and it is included in proposed § 17.105(c)(1)(iii) as applicable to claimants who request a waiver. It is necessary to ensure VA has sufficient information by which to determine whether or not a waiver request should be granted.

Proposed § 17.105(c)(3) would state that the CPAC Chief Fiscal Officer may extend the time period to submit a waiver request if the Chairperson of the Committee on Waivers and Compromises could do so under § 1.963(b) of this chapter. This language would be consistent with current § 17.105(c), except that proposed paragraph (c)(3) uses the term ''waiver request'' instead of the term ''claim.'' Using the term ''waiver request'' would be consistent with the terminology used in part 1 of Title 38, CFR, and referenced throughout this rulemaking, while not substantively changing the meaning of the provision.

Proposed § 17.105(c)(4) would contain the standard of review for waiver requests, and would state that the CPAC Chief Fiscal Officer will apply the ''equity and good conscience'' standard in accordance with §§ 1.965 and 1.966(a) of this chapter, and may waive all or part of the claimant's debts. This language would be identical to that in current § 17.105(c).

Lastly, proposed § 17.105(c)(5) would establish that a decision by the CPAC Chief Fiscal Officer under this provision is final (except that the decision may be reversed or modified based on new and material evidence, fraud, a change in law or interpretation of law, or clear and unmistakable error shown by the evidence in the file at the time of the prior decision, as provided in § 1.969 of this chapter) and may be appealed in accordance with 38 CFR parts 19 and 20 as applicable. This language would be consistent with current § 17.105(c), except that proposed paragraph (c)(5) would include the words ''as applicable'' to more clearly qualify that either or both 38 CFR parts 19 and 20 may apply for purposes of appealing VA's decisions related to waiver requests.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January

18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act (RFA)

The Secretary hereby certifies that this proposed rule would or not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is that this proposed rule impacts only VA staff and veterans, and thus no small entities will be affected. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act (PRA)

Although this proposed rule contains a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the current collection of information. The collection of information for 38 CFR 17.105(c) is currently approved by the Office of Management and Budget (OMB) and has a valid OMB control number of 2900–0165.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Health care, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on December 5, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

■ 2. Amend § 17.105 by revising paragraph (c) to read as follows:

§ 17.105 Waivers

* * * * *

(c) *Of charges for copayments.* If the debt represents charges for outpatient medical care, inpatient hospital care, medication, extended care services, or urgent care copayments made under §§ 17.108, 17.110, 17.111, or 17.4600, either a claimant or VA may initiate a waiver request.

(1) If the claimant requests the waiver, the claimant must:

(i) Make the request within the time period provided in § 1.963(b) of this chapter.

(ii) Submit the request in writing to the Consolidated Patient Account Center (CPAC) Chief Fiscal Officer.

(iii) Provide any additional information that VA may request to determine whether the waiver will be granted.

(iv) Request a hearing under § 1.966(a) of this chapter if a hearing is desired.

(2) If VA requests a waiver on behalf of a veteran, VA will:

(i) Make the request within the time period provided in § 1.963(b) of this chapter.

(ii) Submit the request in writing to the designated CPAC Chief Fiscal Officer.

(iii) Notify the veteran in writing that a waiver request has been made on the veteran's behalf and that the veteran may request a hearing pursuant to § 1.966(a).

(iv) Request any additional information from the veteran that may be required to determine whether the waiver will be granted.

(3) The CPAC Chief Fiscal Officer may extend the time period to submit a waiver request if the Chairperson of the Committee on Waivers and Compromises could do so under § 1.963(b) of this chapter.

(4) The CPAC Chief Fiscal Officer will apply the ''equity and good conscience'' standard in accordance with §§ 1.965 and 1.966(a) of this chapter, and may waive all or part of the claimant's debts.

(5) A decision by the CPAC Chief Fiscal Officer under this provision is final (except that the decision may be reversed or modified based on new and material evidence, fraud, a change in law or interpretation of law, or clear and unmistakable error shown by the evidence in the file at the time of the prior decision, as provided in § 1.969 of this chapter) and may be appealed in accordance with 38 CFR parts 19 and 20, as applicable.

* * * * *

[FR Doc. 2024–28999 Filed 12–16–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2024–0573; FRL–12459–01–R2]

Approval of Air Quality Implementation Plans; New Jersey; Permits and Certificates for Minor Facilities (and Major Facilities Without an Operating Permit), and Air Emission Control and Permitting Exemptions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to New Jersey's State Implementation Plan (SIP), submitted by the New Jersey Department of Environmental Protection (NJDEP), to incorporate regulations concerning permits and certificates for minor source facilities and major source facilities without an operating permit. The intended effect of the NJDEP's revisions to the SIP, is to regulate the construction and modification of stationary sources with adequate requirements to ensure that the National Ambient Air Quality Standards (NAAQS) are satisfied. In addition, the NJDEP's revisions will strengthen the SIP by conforming it with the State regulations that were in effect at the time of the SIP submission. If the EPA finalizes this rulemaking as it is being proposed, the Federal air permitting program for New Jersey will be updated, which will better serve the regulated community and help to protect the quality of air in the State.

DATES: Written comments must be received on or before January 16, 2025.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2024–0573 at *https://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Controlled Unclassified Information (CUI) (formally referred to as 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*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be CUI or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CUI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Nicholas Ferreira, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3127, or by email at *ferreira.nicholas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of the SIP Revision and the EPA's Analysis
III. Environmental Justice Considerations
IV. The EPA's Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

On February 24, 2014, and as supplemented on August 23, 2018, the State of New Jersey, through the NJDEP, submitted to the EPA, revisions to the New Jersey SIP. The revisions consisted of new provisions and amendments to New Jersey Administrative Code (*i.e.,* N.J.A.C.), Title 7, Chapter 27 (*i.e.,* 7:27), subchapter 8, ''Permits and Certificates for minor facilities (and major facilities without an operating permit).'' The revisions submitted on February 24, 2014, and August 23, 2018, became State effective on September 19, 2011, and January 16, 2018, respectively. The last major EPA approval of subchapter 8 into the New Jersey SIP occurred in 1986, with further amendments to the rule approved into the SIP occurring in 1994, 1997, and 2023. The NJDEP's 2014 and 2018 submittals are intended to strengthen the SIP by conforming it with the subchapter 8 State regulations that the State had in effect at the time of submission to the EPA.

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires States to include in their SIPs, programs that regulate the construction and modification of stationary sources with adequate requirements to ensure that the National Ambient Air Quality Standards (NAAQS) are achieved. New Jersey submitted the February 24, 2014, and August 23, 2018, SIP revisions to fulfill this requirement of the CAA as it applies to minor stationary sources and major source facilities without an operating permit.

In accordance with section 110(a) of the CAA, SIP rules must be enforceable, and the EPA must not approve a revision that interferes with any applicable requirement concerning attainment and reasonable further progress (see CAA section 110(l)). The EPA evaluates minor new source review programs included as SIP submittals based on the criteria in subpart I of 40 CFR part 51 and new major sources and major modifications under 40 CFR 51.165 and 51.166 and part C and D of title I of the CAA.

The EPA has determined that the rule revisions that New Jersey submitted, are mostly consistent with the relevant policy and guidance regarding the enforceability of the revisions. Additionally, the EPA has determined that the rule revisions comply with the requirement under CAA section 110(l), that the EPA may not approve a revision that could interfere with any applicable requirement concerning attainment and reasonable further progress and meet the criteria in subpart I of 40 CFR part 51, §§ 51.160 through 51.164. For the reasons herein stated, apart from five provisions related to odor (which the NJDEP acknowledged within its February 24, 2014, cover letter that was included with the SIP submittal would not be incorporated by the EPA into the federally enforceable SIP) and one provision related to affirmative defense (which was withdrawn by the NJDEP after the February 24, 2014, and August 23, 2018, submittals) the EPA proposes to approve the amendments submitted by New Jersey to strengthen the State's SIP.

II. Summary of the SIP Revision and the EPA's Analysis

On February 24, 2014, and as supplemented on August 23, 2018, New Jersey, through the NJDEP, submitted revisions to its SIP, consisting of new provisions and amendments to N.J.A.C. 7:27–8, ''Permits and Certificates for minor facilities (and major facilities without an operating permit).'' Specifics on the amendments to the current SIP-approved subchapter 8 provisions are provided in further detail under this section of the preamble. The NJDEP's submission included supplemental materials such as documentation of the: public hearing, public comment period, and the State's responses to public comments. These materials are in the EPA's docket for this proposal.

Subchapter 8.1, ''Definitions''

The EPA finalized the amendments to the definitions for terms under N.J.A.C. 7:27–8.1, ''Definitions,'' on November 28, 2023. *See* 88 FR 83036. As a result, the EPA will not be proposing to approve any revisions to N.J.A.C. 7:27–8.1 with this proposed rulemaking.

Subchapter 8.2, ''Applicability''

N.J.A.C. 7:27–8.2, ''Applicability,'' lists the sources of air contaminant emissions, including pieces of equipment, operations, and/or processes, for which the procurement of a permit and operating certificate are required. The EPA last approved N.J.A.C. 7:27–8.2, ''Permits and certificates required,'' into New Jersey's SIP on August 7, 1997,[1] and is now proposing to approve revisions that have since been made to N.J.A.C. 7:27–8.2, including the renaming of this subsection.

Per N.J.A.C. 7:27–8.2(a), a source that is required to have a permit and certificate under N.J.A.C. 7:27–8 (*i.e.,* ''subchapter 8'') is a ''significant source,'' and a source that is not required to have a permit and certificate under subchapter 8 is considered an ''insignificant source.'' As clarified in N.J.A.C. 7:27–8.2(b), a significant source that is located at a facility with an operating permit subject to N.J.A.C. 7:27–22, ''Operating permits,'' is not subject to the requirements of subchapter 8. However, in accordance with N.J.A.C. 7:27–8.2(b)(1) through (3),

[1] *See* 62 FR 42412.

a source located at a facility with an operating permit will still remain subject to the requirements of subchapter 8: (1) While awaiting an operating permit to be issued, (2) if it is a new source and it elects to obtain a preconstruction permit and certificate per N.J.A.C. 7:27–22.5(g), or (3) if a portion of the operating permit facility is not subject to N.J.A.C. 7:27–22 requirements, then that portion remains subject to subchapter 8.

A significant source includes any equipment or source of operation that may emit one or more air contaminants directly or indirectly into the outdoor air and belongs to one of the categories listed under N.J.A.C. 7:27–8.2(c)(1) through (21). However, equipment or source operations listed under N.J.A.C. 7:27–8.2(d)(1) through (14), are exempt from being classified as a significant source and do not require a preconstruction permit and operating certificate.

Per N.J.A.C. 7:27–8.2(e), equipment or a source operation that would be classified as a significant source solely based on a combined raw material weight exceeding 50 pounds in any one hour under N.J.A.C. 7:27–8.2(c)(19), is not considered a significant source, and therefore, not required to obtain a permit and certificate, provided it satisfies the conditions at N.J.A.C. 7:27–8.2(e)(1) through (3). In addition, per N.J.A.C. 7:27–8.2(f)(1), commercial fuel burning equipment under N.J.A.C. 7:27–8.2(c)(1), except for the sources listed under N.J.A.C. 7:27–8.2(c)(21), that has a maximum rated heat input of 1,00,000 BTU per hour or greater to the burning chamber (including emergency generators), is excluded from the requirement to obtain a preconstruction permit and operating certificate, if it meets the criteria under N.J.A.C. 7:27–8.2(f)(1) through (4).

The EPA will not be proposing to approve N.J.A.C. 7:27–8.2(d)(3)(ii)(2) and N.J.A.C. 7:27–8.2(e)(2)(ii), per the NJDEP's request, since these provisions address and reduce ''odors.'' [2] While the NJDEP included the odor provisions in the February 24, 2014, SIP revision, the NJDEP acknowledged in its cover letter that the EPA does not regulate odors and, consequently, the odor provisions will not be included in the federally enforceable SIP. The NJDEP is correct that odors are not regulated by the EPA and that the EPA's approval of SIPs is limited to air pollutants regulated by Federal rules; therefore, the EPA is not proposing to approve these odor related provisions into the SIP.

Furthermore, under N.J.A.C. 7:27–8.2(g), control apparatus serving as a significant source are to be included in the preconstruction permit and operating certificate control for the significant source. In accordance with N.J.A.C. 7:27–8.2(h), emissions information from an insignificant source is required to be provided on an application subject to N.J.A.C. 7:27–8.4, if the insignificant source vents to a control device, stack, or chimney, which also serves a significant source. Additionally, N.J.A.C. 7:27–8.2(i) stipulates that a permit and certificate are not required for equipment, control apparatus, or a source operation covered by a facility-wide permit issued per N.J.S.A. 13:1D–35, except where N.J.A.C. 7:27–8.27, ''Special facility-wide permit provisions,'' is still applicable. Finally, N.J.A.C. 7:27(j), clarifies that subchapter 8 does not preclude an owner or operator from voluntarily obtaining a preconstruction permit and operating certificate for a source not required to obtain a permit.

The EPA finds the applicability provisions of N.J.A.C. 7:27–8.2 acceptable for ensuring a vast variety of sources are covered by the provisions of subchapter 8. Therefore, the EPA is proposing to approve N.J.A.C. 7:27–8.2, except for N.J.A.C. 7:27–8.2(d)(3)(ii)(2) and N.J.A.C. 7:27–8.2(e)(2)(ii), as it was submitted to the EPA by the NJDEP on February 24, 2014, and as supplemented on August 23, 2018.

Subchapter 8.3, ''General Provisions''

N.J.A.C. 7:27–8.3, ''General provisions,'' provides the general requirements for obtaining a preconstruction permit or operating certificate for a significant source or a control apparatus serving a significant source. The EPA last approved N.J.A.C. 7:27–8.3 into New Jersey's SIP on November 25, 1986,[3] and is now proposing to approve the revisions that New Jersey made since the 1986 approval, through August 23, 2018.

As specified in N.J.A.C. 7:27–8.3(a) and (b), no person shall construct, reconstruct, install, modify, or operate a significant source or control apparatus without first obtaining a preconstruction permit and/or valid operating certificate. In addition, under N.J.A.C. 7:27–8.3(c), a permittee may not take any action that requires a permit revision, compliance plan change, seven-day-notice change, amendment, or change to a batch plant permit under any appliable provision at N.J.A.C. 7:27–8.17 through 23 (as will be discussed later in this proposed rulemaking), without complying with the applicable provisions under subchapter 8.

According to N.J.A.C. 7:27–8.3(d) and N.J.A.C. 7:27–8.3(m), persons holding a permit or certificate are required to make relevant documents readily available to the NJDEP for inspection on the operating premises. The NJDEP reserves the right for its representatives to enter and inspect any facility or property as provided by N.J.A.C. 7:27–1.31. Additionally, under N.J.A.C. 7:27–8.3(e), no person is allowed to use any equipment unless all components are functioning properly and in a manner that is consistent with the preconstruction permit and certificate. Per N.J.A.C. 7:27–8.3(f), a preconstruction permit or certificate is not allowed to be transferred from the location authorized in the permit to another location, as well as from one piece of equipment to another.

Once a permit and certificate are issued, the permittee is fully responsible for compliance with the permit and certificate, subchapter 8, and any other requirement issued by the NJDEP with the force of law (N.J.A.C. 7:27–8.3(g)). Under N.J.A.C. 7:27–8.3(h) permits or certificates issued under subchapter 8 do not relieve an applicant from obtaining necessary permits from other governmental agencies to comply with Federal, State, and local rules and regulations. Finally, per N.J.A.C. 7:27–8.3(i), a person conducting only normal repair and maintenance of a control apparatus or equipment, as defined at N.J.A.C. 7:27–81, need not comply with N.J.A.C. 7:27–8.3(a), (b), or (c).

While the NJDEP included odor provisions in the February 24, 2014, SIP revision, the EPA will not be proposing to approve N.J.A.C. 7:27–8.3(j), per the NJDEP's acknowledgement that odors are not regulated by the EPA and cannot be included in a federally enforceable SIP.[4] The NJDEP is correct that odors are not regulated by the EPA and that the EPA's approval of SIPs is limited to air pollutants regulated by Federal rules; therefore, the EPA is not proposing to approve this odor related provision. Additionally, consistent with a request from the NJDEP on October 7, 2024,[5] the EPA is not acting on N.J.A.C. 7:27–8.3(n), which is an affirmative defense provision. On June 15, 2015, the EPA issued a final action in the **Federal**

[2] *See* the letter that the NJDEP submitted to the EPA's Region 2 Director of the Air and Radiation Division, John Filippelli, dated February 24, 2014, within the docket for this rulemaking.

[3] *See* 51 FR 42565.

[4] *Id.*

[5] *See* the letter that the NJDEP submitted to the EPA's Region 2 Director of the Air and Radiation Division, Richard Ruvo, dated October 7, 2024, within the docket for this rulemaking.

Register that concerned how provisions in EPA-approved SIPs treat excess emissions during periods of startup, shutdown, or malfunction. *See* 80 FR 33840 (June 15, 2015). In that final action, the EPA clarified its interpretation of the Clean Air Act (CAA) with respect to affirmative defense provisions.[6] The EPA explained that affirmative defense provisions in any context are not appropriate under the CAA (''These provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain or what forms of remedy they purport to limit or eliminate.'').[7] Consequently, the emergency affirmative defense provision in N.J.A.C. 7:27–8.3(n) falls within the scope of the EPA's June 15, 2015, final action and cannot be approved. Thus, to avoid potential disapproval, the NJDEP has withdrawn this provision from its submittal, and the EPA will not include this provision within the EPA-approved version of N.J.A.C. 7:27–8.3 that will be included in New Jersey's SIP upon the EPA finalizing this rulemaking. The EPA's treatment of this provision is also consistent with the D.C. Circuit's decision on affirmative defenses in *Environmental Committee of the Florida Electric Power Coordinating Group, Inc.,* v. *EPA,* 94 F.4th 77 (D.C. Cir. 2024).

Except for N.J.A.C. 7:27–8.3(j) and (n), the EPA finds the general provisions listed under N.J.A.C. 7:27–8.3, to be acceptable. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.3, except for N.J.A.C. 7:27–8.3(j) and (n), as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.4, ''*How To Apply, Register, Submit a Notice, or Renew*''

Under N.J.A.C. 7:27–8.4, ''How to apply, register, submit a notice, or renew,'' instructions are provided pertaining to applications, registrations, notices, and renewals related to subchapter 8.

Specifically, N.J.A.C. 7:27–8.4(a)(1) through (12) includes requirements for preconstruction permit and operating certificate applications, registrations for general permits or used oil space heaters, notices of change or amendments (to a seven-day-notice, preconstruction permit or operating certificate, and/or registration), and renewal of an operating certificate or registrations. Actions listed under N.J.A.C. 7:27–8.4(a)(1) through (12) are to be submitted in accordance with forms obtained from the NJDEP via the options listed under N.J.A.C. 7:27–8.4(b)(1) and (2). In addition, directions for how to complete electronic or paper application forms, registration forms, notices or renewal application stubs and renewal fee payments are listed at N.J.A.C. 7:27–8.4(c)(1) through (7). Applications, registrations, or notices will be required under N.J.A.C. 7:27–8.4(d), to contain all relevant details and information which the NJDEP considers necessary pertaining to applicable sources to ensure such sources are designed to operate without violating any relevant State or Federal laws or regulations. Notably, per N.J.A.C. 7:27–8.4(e), all information submitted to the NJDEP, will be considered public information, unless the applicant marks information as confidential in accordance with N.J.S.A. 26:2C–9.2 and N.J.A.C. 7:27–1.

Before approving an operating certificate, the NJDEP, in its discretion, may require an applicant to conduct testing if it is determined to be necessary to verify that an applicable source will comply with the limits established in a preconstruction permit and certificate (N.J.A.C. 7:27–8.4(f)). N.J.A.C. 7:27–8.4(f)(1) through (6) lists the requirements that applicants shall follow if the NJDEP determines testing is required. An application, registration, or notice will generally not be required to include information on insignificant sources unless the exception at N.J.A.C. 7:27–8.4(g) applies. The number of sources that can be included on one application, registration, or notice is determined according to the guidelines in N.J.A.C. 7:27–8.4(h).

A New Source Performance Standards (NSPS) and National Emission Standard for Hazardous Air Pollutants (NESHAP) applicability and compliance demonstration will be required under N.J.A.C. 7:27–8.4(i), as part of an application for a preconstruction permit or permit revision for proposed equipment that is within any source category to which an NSPS or NESHAP is applicable. Under N.J.A.C. 7:27–8.4(j), an application shall include a protocol for conducting an air quality impact analysis and a risk assessment, if required under N.J.A.C. 7:27–8.5. An application, registration, or notice is required to list each air contaminant which meets the conditions under N.J.A.C. 7:27–8.4(k)(1) if it is required by an applicable form. The EPA is not proposing to approve N.J.A.C. 7:27–8.4(k)(2) since it addresses the reduction of ''odors,'' and the EPA's approval of SIPs is limited to pollutants regulated by Federal rules, as acknowledged by the NJDEP in the cover letter for its February 24, 2014 submission.

Applicants must list each Hazardous Air Pollutant (HAP) raw material individually on their application. For non-HAP raw materials, applicants can either list them individually or group them together based on similar physical and/or chemical properties, as specified in N.J.A.C. 7:27–8.4(l)(1) and (2). When listing the emissions for a contaminant pursuant to N.J.A.C. 7:27–8.4(k), the application, registration, or notice should follow the instructions at N.J.A.C 7:27–8.4(m). To ensure timely renewal of an operating certificate, a used oil space heater registration, or a registration under a general permit, a permittee is required to submit a renewal application stub and renewal fee payment no less than 90 days prior to the expiration date of such certificates and registrations (N.J.A.C. 7:27–8.4(n)). In accordance with N.J.A.C. 7:27–8.4(o), persons submitting an application, registration, or notice to the NJDEP pursuant to subchapter 8, are required to include certifications complying with N.J.A.C. 7:27–1.39. In addition, any relevant information an applicant might want the NJDEP to consider during the decision-making process will be required to be submitted in writing prior to the NJDEP deciding on the application, registration, or notice (N.J.A.C. 7:27–8.4(p)).

As was the case for N.J.A.C. 7:27–8.4(k)(2), N.J.A.C. 7:27–8.4(q) also addresses and reduces ''odors,'' therefore the EPA is not acting on this provision. Despite including the odor provisions in an attachment to its February 24, 2014 SIP submittal, the NJDEP acknowledged in its cover letter that the EPA does not regulate odors and, consequently, the oder provisions will not be included in the SIP.

Finally, permitting procedure manuals are listed under N.J.A.C. 7:27–8.4(s)(1) through (4), which summarize certain alternative application and permitting procedures, developed to take into consideration the specific characteristics of sources, for which an applicant may elect to use, rather than the corresponding standard procedures set forth in subchapter 8.

The EPA finds the provisions under N.J.A.C. 7:27–8.4 (except for N.J.A.C. 7:27–8.4(k)(2) and (q)), as submitted to the EPA by the NJDEP on February 24, 2014, and as supplemented on August 23, 2018, to be acceptable and is therefore proposing approval into the SIP.

Subchapter 8.5, ''*Air Quality Impact Analysis*''

Under N.J.A.C. 7:27–8.5, ''Air quality impact analysis,'' requirements for

[6] 80 FR 33981–33982.

[7] 80 FR 47029.

applications subject to an air quality impact analysis are established.

Applications that shall include an air quality impact analysis are listed under N.J.A.C. 7:27–8.5(a). This includes applications which are subject to the Prevention of Significant Deterioration (PSD) air quality impact analysis requirements of 40 CFR part 52.21, those for which the proposed maximum allowable emission of an air contaminant would result in a significant net emission increase, those for which are required to by a State or Federal rule, and those which the NJDEP determines such an analysis to be necessary to determine the environmental impact of proposed activities.

In addition, N.J.A.C. 7:27–8.5(b) provides the NJDEP with the authority to require ambient air monitoring and a risk assessment as part of the air quality impact analysis. An air quality impact analysis is required to demonstrate whether the maximum controlled emissions specified on the preconstruction application may violate the requirements under N.J.A.C. 7:27–8.5(c)1–4.

Finally, the NJDEP can only approve an air quality analysis and/or risk assessment if it is conducted in accordance with a protocol that is approved in advance by the NJDEP (N.J.A.C. 7:27–8.5(d)). An approvable protocol must include, but is not limited to, the relevant site-specific and general factors detailed under N.J.A.C. 7:27–8.5(d). This subsection also references the technical guidance on protocol preparation under the Air Quality Permitting Program's Technical Manual 1002, ''Guidance on preparing an Air Quality Modeling Protocol'' and Technical Manual 1003, ''Guidance on Preparing a Risk assessment for Air Contaminant Emissions.'' [8]

The EPA finds the provisions under N.J.A.C. 7:27–8.5 appropriate for ensuring that necessary projects undergo air quality assessments. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.5, as it was submitted to the EPA, by the NJDEP on February 24, 2014.

Subchapter 8.6, ''*Service Fees*''

Under N.J.A.C. 7:27–8.6, ''Service fees,'' the applicable registration fees a registrant shall submit with a completed registration form, acceptable forms of payment, and the schedule for which fees are to be submitted by a registrant and processed by the NJDEP are specified. The EPA last approved provisions pertaining to service fees into New Jersey's SIP with its approval of N.J.A.C. 7:27–8.11, ''Service fees,'' on April 15, 1994,[9] and is now proposing to approve the revisions that have since been made, which include the renumbering of this subsection from 8.11 to 8.6.

N.J.A.C 7:27–8.6(a) through (f), provides for paper and online applications, the procedure for invoicing and paying any potential supplementary fees, the fee process for new applications, and the payment of fees by installments. N.J.A.C. 7:27–8.6(f) lists the specific fee amounts in ''Base Fee Tables'' (Tables 1–3) and the ''Supplementary Fee Schedule.'' Further, the NJDEP is provided with the ability and allowance to consider an increase to these fees under N.J.A.C. 7:27–8.6(l).

In accordance with N.J.A.C. 7:27–8.6(g), facilities subject to N.J.A.C. 7:27–22 are not required to pay the operating certificate fees set forth in Tables of N.J.A.C. 7:27–8.6 after June 30, 1995; however, after June 30, 1995, such facilities are required to pay fees in accordance with N.J.A.C. 7:27–22.31 for any significant modification, as defined under N.J.A.C. 7:27–22.1, while the issuance of an operating permit for the facility is pending. Moreover, under N.J.A.C. 7:27–8.6(k) there is no fee for an insignificant source even if emissions from an insignificant source must be listed on an application under N.J.A.C. 7:27–8.4(g).

The EPA finds these provisions under N.J.A.C. 7:27–8.6 to be acceptable for ensuring that facilities required to obtain such permits and certificates in accordance with subchapter 8 are making the payments necessary to fund such a program. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.6, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.7, ''*Operating Certificates*''

N.J.A.C. 7:27–8.7, ''Operating certificates,'' details the provisions pertaining to the acquisition of an operating certificate, the lifetime and renewal requirements of an operating certificate, and the types of temporary operating certificates that may be issued if the NJDEP determines additional information is needed while the source is operational.

In accordance with N.J.A.C. 7:27–8.7(a), a source covered by a preconstruction permit is required to also be covered by an operating certificate. The preconstruction permit application form will also serve as the application form for the operating certificate and the NJDEP will issue both the preconstruction permit and operating certificate simultaneously, in one combined document (N.J.A.C. 7:27–8.7(a)). As a result, under N.J.A.C. 7:27–8.7(b), an applicant is required to follow the procedures for applying for a permit and certificate under N.J.A.C. 7:27–8.4 to obtain an operating certificate or temporary operating certificate.

Operating certificates (except for temporary operating certificates issued under N.J.A.C. 7:27–8.7(d)) expire five years after the date the preconstruction permit for the source is issued under N.J.A.C. 7:27–8.7(c) and are to be renewed prior to their expiration, if a source continues to operate, under N.J.A.C. 7:27–8.7(e). The NJDEP can issue one of two types of temporary operating certificates under N.J.A.C. 7:27–8.7(d)(1) and (2), before issuing the final operating certificate, if it needs information that can only be obtained while a source is operating (*e.g.,* stack test results). As provided under N.J.A.C. 7:27–8.7(f), the NJDEP may also require testing to ensure compliance with State and Federal air pollution control requirements prior to renewing an operating certificate.

The EPA finds these provisions under N.J.A.C. 7:27–8.7 to be appropriate for ensuring that operating certificates are regulated by the NJDEP in accordance with Federal regulations. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.7, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.8, ''*General Permits*''

Under N.J.A.C. 7:27–8.8, ''General permits,'' the requirements pertaining to a general permit are provided. As detailed under N.J.A.C. 7:27–8.8(a), a general permit is a pre-approved permit and certificate which applies to a specific class of significant sources that the NJDEP issues pursuant to N.J.S.A. 26:2C–9.2(h). If a source qualifies for a general permit, and its owner or operator registers and complies with subchapter 8, then the registration satisfies the requirements at N.J.A.C. 7:27–8.3 for a permit and certificate.

Per N.J.A.C. 7:27–8.7(b), general permits may not cover sources subject to the PSD requirements under 40 CFR 52.21, or the emissions offset requirements of N.J.A.C. 7:27–18. However, general permits are available for sources listed under N.J.A.C. 7:27–8.8(c)(1) through (23). These sources include, but are not limited to: fuel dispensing facilities, certain eligible stationary storage tanks, boilers and/or heaters with specified heat inputs,

[8] These technical guidance documents are available on the NJDEP's website at *https://www.nj.gov/dep/aqpp/techman.html.*

[9] *See* 59 FR 17933.

certain solvent degreasers using only Methylene Chloride or 1,1,1, Trichloroethane, certain equipment located at dry cleaning facility, equipment located at a plating or electroplating facility which is not subject to Maximum Achievable Control Technology (MACT), and equipment used for research and development meeting the applicability requirements specified in the general permit.

Per N.J.A.C. 7:27–8.8(d), the NJDEP will be responsible for providing a registration form, the general permit itself, and a document entitled ''General Procedures for General Permits.'' The registration form to be provided by the NJDEP must include the information in N.J.A.C. 7:27–8.8(e). Furthermore, the general permit will be required to include all the conditions and requirements which must be met in order to act under the authority of the general permit including those listed under N.J.A.C. 7:27–8.8(f)(1) through (5). According to N.J.A.C. 7:27–8.8(g), the ''General Procedures for General Permits'' shall apply to all general permits; and shall include instructions for their use, a list of available general permits, and citations to the relevant regulatory provisions for their use.

While some general permits apply to only one source, others may apply to a class of sources located at the same facility; therefore, N.J.A.C. 7:27–8.8(h) specifies whether each general permit applies to a group or a single source. That said, if a general permit applies to only one source, and if there are several sources at one facility that qualify for a general permit, a separate registration, including a fee, will have to be submitted for each source (N.J.A.C. 7:27–8.8(h)).

Per N.J.A.C. 7:27–8.8(i), registrants have the authority to operate under a general permit if they provide proof of the NJDEP's receipt of a registration form. A registrant will be allowed to operate under the general permit for five years after the date of proof of receipt, unless one of the circumstances under N.J.A.C. 7:27–8.8(i)(1) and (2) are satisfied.

Registrants are fully responsible for ensuring that the requirements of the general permit, the General Procedures for General Permits, and N.J.A.C. 7:27–8.8 are complied with, or otherwise may be liable for penalties if a source has been registered under a general permit and the registration is incorrect or deficient (N.J.A.C. 7:27–8.8(j)). Per N.J.A.C 7:27–8.8(k), the NJDEP shall acknowledge when a registration and fee are received. The NJDEP's acknowledgment under N.J.A.C. 7:27–8.8(k) solely indicates that NJDEP received the registration; it is not confirmation of review or approval of the registration and will not relieve a registrant from liability for penalties for any unauthorized activities. Under N.J.A.C. 7:27–8.8(l), registrants must operate within the conditions of the general permit, including any parameters tailored to the source, and failure to do so shall constitute a violation of a permit. Additionally, under N.J.A.C. 7:27–8.8(l), if a registrant wants to make a change to a source registered under a general permit, a new general permit registration is required unless the modifications would fall under the same permit conditions.

When a general permit is issued, or an existing one is amended, the NJDEP, under N.J.A.C. 7:27–8.8(m), will draft or amend a registration form and general permit, as well as publish a notice in the New Jersey Register to make the documents available for public review and comment. Moreover, in accordance with N.J.A.C. 7:27–8.8(m), the NJDEP will also be required to incorporate any changes deemed appropriate into the final general permit. The NJDEP will announce the final general permit and add to the list of sources in N.J.A.C. 7:27–8.8(c) through a notice of administrative change published in the New Jersey Register (N.J.A.C. 7:27–8.8(m)). If the NJDEP modifies an existing permit, it will notify each person who has registered under the general permit, and the registrant will be required to comply with the applicable requirements of N.J.A.C. 7:27–8.8(n)(1) and (2).

The EPA finds the provisions under N.J.A.C. 7:27–8.8 to be appropriate for ensuring that general permits are adequately regulated by the NJDEP. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.8, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.9, ''Environmental Improvement Pilot Tests''

N.J.A.C. 7:27–8.9, ''Environmental improvement pilot tests,'' provides the requirements concerning applications for preconstruction permits and certificates for environmental improvement pilot tests for air pollution control equipment or other environmental clean-up equipment.

Applicants are required to include the specific information listed at N.J.A.C. 7:27–8.9(c) and satisfy the fee for such a test set forth under N.J.A.C. 7:27–8.6 when applying for such tests (N.J.A.C 7:27–8.9(f)). In addition, under N.J.A.C. 7:27–8.9(b), applicants must ensure that all equipment for an environmental improvement pilot test complies with applicable requirements under subchapter 8 and that the activities will not cause impacts outside the property boundary. Upon completion of such a test, equipment involved must cease operating or return to operating under conditions of an existing permit, if there are any.

The NJDEP has 30 days to take final action after receipt of a complete application under N.J.A.C. 7:27–8.9(d), and the NJDEP's approval of a permit and certificate for an environmental improvement pilot test shall not last any longer than a 90-day term, unless the permittee files a new application and the NJDEP grants an extension, however the NJDEP will only grant an extension if the proposed activities meet the definition of an environmental improvement pilot test at N.J.A.C. 7:27–8.1 (N.J.A.C. 7:27–8.9(e)). Records pertaining to product run time, emission testing performed, and other data relevant to the emission of air contaminants must be retained by the holder of an environmental improvement pilot test for a minimum of five years and included in future applications (N.J.A.C. 7:27–8.9(g)). Finally, under N.J.A.C. 7:27–8.9(h), once the environmental improvement pilot test is complete, the equipment involved must stop operating or return to operating under the condition of any existing permit. Moreover, the approval of an environmental improvement test does not constitute the NJDEP's acceptance of the equipment or a process for future production purposes (N.J.A.C. 7:27–8.9(h)).

The EPA finds these provisions under N.J.A.C. 7:27–8.9 to be appropriate for ensuring that environmental improvement pilot tests are conducted in an appropriate manner. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.9, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.10, ''Public Comment''

Under N.J.A.C. 7:27–8.10, ''Public comment,'' the public comment requirements for applications subject to the provisions of subchapter 8 are specified. Specifically, the NJDEP is obligated to seek public comment prior to making any final decision on applications for which comment is required by State or Federal statutes, including those listed under N.J.A.C. 7:27–8.10(a)(1) through (3).

Pursuant to N.J.A.C. 7:27–8.10(b), the Commissioner of the NJDEP may seek comments from the public if the Commissioner finds a significant degree of public interest in the application, if public comments might clarify issues in the application, or if it is relevant to the

factors, including but not limited to, those listed at N.J.A.C. 7:27–8.10(b)(1) through (4). In accordance with N.J.A.C. 7:27–8.10(c), NJDEP is also required to notify those who submitted a written request for public comment of the decision, including its rationale if a request is denied.

To clarify, while there is no opportunity for the public to request a public hearing for minor sources covered under N.J.A.C. 7:27–8.10 (unless the NJDEP Commissioner determines there is significant public interest), the NJDEP does post every draft permit it receives under the NJDEP's ''Public Notices'' web page during the associated public comment period, providing transparency and thereby affording review and comment.[10] Beyond posting draft permits for public comment on its website, the NJDEP enhances transparency through tools like its DataMiner tool,[11] which allows the public to easily find a variety of reports that will provide them with up- to-the-minute results from many different environmental records. The EPA also considers the NJDEP's ''What's in My Community'' web page to be a helpful tool for engaging local communities. The web page is an online ArcGIS mapping tool that provides communities with access to facility permits, emissions data, and enforcement information [12] to enable the public to submit meaningful and informed comments during the public comment period on minor sources.

The EPA also notes that, in accordance with New Jersey's Environmental Justice (EJ) Law (N.J.S.A. 13:1D–157 *et seq.*), signed by Governor Phil Murphy in September 2020, when permit applicants propose to construct, renew, or operate a facility located wholly or in part in an overburdened community, permit applicants must: (1) prepare an environmental justice impact statement (EJIS) assessing the potential environmental and public health stressors associated with the proposed new, expanded, or major facility; (2) transmit the environmental impact statement at least 60 days in advance of the public hearing required pursuant to paragraph 3; and (3) organize and conduct a public hearing within the overburdened community. Regarding the public hearing, the permit applicants shall publish a notice no less than 60 days prior to the hearing, which will include: the date, time and location of the hearing, a description of the proposed new, expanded, or existing major source facility, a summary of the EJIS and information on how to review it, and an address for the submittal of written comments. After the public hearing, the permit applicants shall transcribe the public hearing and, no later than 10 days after the public hearing, shall submit the transcript along with any written comments to the NJDEP.

The EPA finds the provisions under N.J.A.C. 7:27–8.10, as well as resources the NJDEP has made available via its web page and the requirements for facilities under New Jersey's EJ Law, to be appropriate for ensuring that the public is offered an adequate opportunity to provide comments on permits and certificates that the NJDEP issues under subchapter 8. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.10, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.11, ''Standards for Issuing a Permit''

Under N.J.A.C. 7:27–8.11, ''Standards for issuing a permit,'' applicants are required to document compliance with relevant State and Federal air pollution control regulations to obtain approval for a permit and certificate, a permit revision, or a compliance plan change. Specifically, under N.J.A.C. 7:27–8.11(a)(1), each significant source included on an application must document that it meets the Reasonable Available Control Technology (RACT) requirements under N.J.A.C. 7:27–16 or 19, New Source Performance Standards (NSPS) requirements, PSD requirements under 40 CFR 52.21, and all other applicable State or Federal air pollution control standards and regulations. Additionally, per N.J.A.C. 7:27–8.11(a)(2), each significant source is required to document that it incorporates advances in the art of air pollution control (*i.e.,* ''state of the art'' or ''SOTA'') for the kind and amount of air contaminant emitted if the source meets the criteria at N.J.A.C. 7:27–8.12(a) and the applicant proposes to modify the source.

The EPA finds these provisions under N.J.A.C. 7:27–8.11 to be sufficient for guaranteeing that the approval of a permit and certificate, a permit revision, or a compliance plan change protects air quality within the State. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.11, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.12, ''State of the Art''

N.J.A.C. 7:27–8.12, ''State of the art,'' requires an application that proposes construction, installation, reconstruction, or modification of equipment and control apparatus for a significant source meeting the criteria of N.J.A.C. 7:27–8.12(a)(1) and (2), to document SOTA for the source. As the EPA states under the analysis of N.J.A.C. 7:27–8.11 within this propose rulemaking, SOTA is the level of emissions control that a significant source must meet.

In particular, under N.J.A.C. 7:27–8.12(a), that all significant sources that have the potential to emit (PTE) at least 5.0 tons per year of total volatile organic compounds (VOC), total suspended particles (TSP), particulate matter under 10 microns (PM_{10}), particulate matter under 2.5 microns ($PM_{2.5}$), nitrogen oxides (NO_X), carbon monoxide (CO), or sulfur dioxide (SO_2), as detailed within the SOTA Threshold in Appendix 1, Tables A, are required to document compliance with SOTA. Per N.J.A.C. 7:27–8.12(d), and in accordance with the definition of ''potential to emit'' under N.J.A.C. 7:27–8.1, PTE will be calculated separately for each piece of equipment, including any fugitive emissions after considering emission controls.

As set forth at N.J.A.C. 7:27–8.12(b), if an equipment or control apparatus is subject to the SOTA criteria of N.J.A.C. 7:27–8.12(a), documentation of SOTA for the air contaminant(s) that meet the criteria will only be required. In addition, under N.J.A.C. 7:27–8.12(c), documentation of SOTA for equipment and control apparatus that has, for every air contaminant, a PTE less than the levels indicated in N.J.A.C. 7:27–8.12(a) will not be required.

N.J.A.C. 7:27–8.12(e) allows sources to document their compliance with

[10] Under the provisions of N.J.A.C. 7:27–8.10 and N.J.A.C. 7:27–22.11, the NJDEP seeks comments from the public on draft permits during the associated public comment period on its web page. *See https://dep.nj.gov/boss/public-notices/*. The NJDEP also makes all documents available for public review at the NJDEP's offices located at 401 East State Street, Trenton, New Jersey, and permit documents are available for review at the Regional Enforcement Offices. The NJDEP also provides the public with the opportunity to review older public notice postings by selecting the ''Public Notice Archive'' option at the top of the ''Public Notice'' web page.

[11] *See https://njems.nj.gov/DataMiner/Search/SearchByCategory*.

[12] The NJDEP's ''What's in My Community'' is a mapping tool that helps the public find what sources of air pollution is in and around their community. Upon opening the tool, a map displaying every facility with an air permit (including both major and minor sources) registered with the Division of Air Quality at the NJDEP is provided. The public can also view what the closest air monitors are reading by clicking on them and generating a report for Ozone, $PM_{2.5}$, CO, NO_2 and SO_2.

The tool can be accessed at *https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b*.

SOTA if they are complying with Lowest Achievable Emission Rate (LAER), Best Available Control Technology (BACT), MACT, or NSPS; or through compliance with the available SOTA technical manuals that the NJDEP has developed.

Current SOTA technical manuals are listed on the NJDEP website for several source categories and a permit applicant must document compliance with a SOTA Manual (available from the NJDEP at the address in N.J.A.C. 7:27–8.4(b)) that applies to the source. If neither of the previously listed options for determining SOTA are applicable, then the NJDEP, based on a demonstration by the applicant, would perform a ''top down'' SOTA demonstration as is detailed under N.J.A.C. 7:27–8.12(f)(1) through (3).

The EPA finds the procedures for determining SOTA for criteria air pollutants N.J.A.C. 7:27–8.12 to be acceptable; therefore, the EPA is proposing to approve these procedures for determining SOTA for criteria pollutants. With respect to the SOTA technical manuals referred to in N.J.A.C. 7:27–8.12, as a method for documenting SOTA, it is the EPA's understanding that each of the SOTA technical manuals cited within subchapter 8 are likely to change and be updated over time, and the language is not contained in the regulation itself; therefore, the EPA is not proposing to approve the individual manuals referred to within N.J.A.C. 7:27–8.12 and is instead proposing to approve the process of using the manuals set forth in N.J.A.C. 7:27–8.12.

Subchapter 8.13, ''*Conditions of Approval*''

Under N.J.A.C. 7:27–8.13, ''Conditions of approval,'' the NJDEP has the authority to establish conditions of approval for any preconstruction permit or certificate application. Under N.J.A.C. 7:27–8.13(b)(1) through (3), the NJDEP may revise approval conditions at various points, such as during permit or certificate renewal, or at any time while the certificate is in effect.

A permittee will be required to submit information relevant to the operation of equipment and control apparatus to the NJDEP, including but not limited to information listed at N.J.A.C. 7:27–8.13(c)(1) through (3). As a condition of approval, the NJDEP can also include a compliance plan that includes monitoring, recordkeeping, and reporting requirements in accordance with N.J.A.C. 7:27–8.13(d)(1) through (4) and establish a schedule of periodic compliance inspections to which the equipment or control apparatus is subject in accordance with N.J.A.C. 7:27–8.13(e). In addition, under N.J.A.C. 7:27–8.13(f), the NJDEP may include a condition allowing it to convert a certificate to a temporary operating certificate upon written notice to the permittee.

The NJDEP may also impose financial conditions on an applicant, such as requiring reimbursement for compliance monitoring costs listed under N.J.A.C. 7:27–8.13(g). All information in an approved application, including rates of emission, hours of operation, and rate of production (as listed under N.J.A.C. 7:27–8.13(h)(1) through (3)), and any condition of approval thereof, is subject to enforcement. Moreover, upon the NJDEP's request, a permittee can be required to provide testing facilities exclusive of instrumentation and sensing devices, as may be necessary to determine the kind and amount of air contaminants emitted from equipment or a control apparatus, and in accordance with the testing requirements listed under N.J.A.C. 7:27–8.13(i).

The EPA finds the provisions under N.J.A.C. 7:27–8.13 to be sufficient for ensuring that the NJDEP appropriately approves applications for permits and certificates in a manner that ensures the protection of human health and the environment. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.13, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.14, ''*Denials*''

Under N.J.A.C. 7:27–8.14, ''Denials,'' the NJDEP has the authority to deny a permit and certificate application.

In particular, under N.J.A.C. 7:27–8.14(a), the NJDEP shall deny an application if anything in an application has the potential to violate any provision within N.J.A.C. 7:27, an applicable NSPS, an applicable NESHAP (including a MACT standard), a Federal stack height or emission dispersion requirement as stated in 40 CFR part 51, administrative order, or a State/Federal requirement. In addition, under N.J.A.C. 7:27–8.14(a), the NJDEP shall deny an application if it would result in the exceedance of a State or Federal ambient air quality standard, an applicable PSD increment as defined in 40 CFR part 52, or other criteria established by the NJDEP to protect human health and the environment.

Furthermore, N.J.A.C. 7:27–8.14(b), states that the NJDEP must deny an application for a preconstruction permit that fails to meet the requirements of N.J.A.C. 7:27–8.11, ''Standards for issuing permits''; or if the applicant fails to provide all information requested by the NJDEP within 30 days of its request (or longer if approved by the NJDEP), as provided under N.J.A.C. 7:27–8.14(c). Finally, in accordance with N.J.A.C. 7:27–8.14(d), the NJDEP may deny an application for a certificate, or renewal thereof, if the applicant has failed to pay the associates fees for such application or failed to reimburse the NJDEP for any of the charges incurred under the scenarios in N.J.A.C 7:27–814(d)(2)(i) and (ii).

The EPA finds the provisions under N.J.A.C. 7:27–8.14 to be sufficient for ensuring that the NJDEP appropriately denies applications for permits and certificates, or renewals of such, consistent in a manner that ensures the protection of air quality in the State. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.14, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.15, ''*Reporting Requirements*''

Under N.J.A.C. 7:27–8.15, ''Reporting requirements,'' the NJDEP has the authority to request that any person holding a preconstruction permit or certificate submit any record relevant to a permit or certificate within 30 days of its request (or longer if approved by the NJDEP). In accordance with N.J.A.C. 7:27–8.15(b) and (c), permittees must submit, along with the appropriate certifications in compliance with N.J.A.C. 7:27–1.39, any required report in a format and on a schedule at the discretion of the NJDEP.

The EPA considers these reporting provisions necessary for effective regulatory enforcement and proposes to approve N.J.A.C. 7:27–8.15, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.16, ''*Revocation*''

Under N.J.A.C. 7:27–8.16, ''Revocation,'' the conditions under which the NJDEP can revoke a permit or certificate are listed. Specific conditions under N.J.A.C. 7:27–8.16(a), include unauthorized operational changes, non-compliance with permit terms, refusal of inspection access, and non-payment of penalties or fees.

If a permittee does not begin activities authorized by the permit/permit revision, or discontinues the activities authorized by the permit/permit revision within one year from the date of a preconstruction permit/permit revision, the NJDEP has authority to withdraw its approval or a preconstruction permit/permit revision (N.J.A.C. 7:27–8.16(b)(1) and (2)). In addition, the NJDEP can revoke its approval of an application if it

determines the approval contravenes a Federal or State regulation (N.J.A.C. 7:27–8.16(c)). Under N.J.A.C. 7:27–8.16(d), any notice of revocation must be issued by the NJDEP in writing.

The EPA finds the provisions under N.J.A.C. 7:27–8.16, which provide the NJDEP with authority to retire a permit or certificate and withdraw an application under certain circumstances, to be appropriate. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.16 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.17, ''*Changes to Existing Permits and Certificates*''

Under N.J.A.C. 7:27–8.17, ''Changes to existing permits and certificates,'' the conditions for which a change to an existing permit or certificate may occur are listed.

With N.J.A.C. 7:27–8.16(a), some changes may require prior approval from the NJDEP, while others may only require a notification to the NJDEP. N.J.A.C. 7:27–8.17(b) establishes a hierarchy for review, mandating that the most comprehensive review standards apply depending on the permit change, which include permit revisions, compliance plan changes, seven-day-notices, and amendments. N.J.A.C. 7:27–8.17(c) refers permittees on which applications to file for each type of change, and the applicable fees under N.J.A.C. 7:27–8.6(b). Per N.J.A.C. 7:27–8.17(e), none of the changes listed under N.J.A.C. 7:27–8.17(b)(1) through (4) can change the date of the preconstruction permit's operating certificate.

The EPA finds these provisions authorizing the NJDEP to revoke a permit or certificate acceptable for ensure permittees follow appropriate procedures to ensure compliance with the provisions of subchapter 8. The EPA therefore proposes to approve N.J.A.C. 7:27–8.17 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.18, ''*Permit Revisions*''

Under N.J.A.C. 7:27–8.18, ''Permit revisions,'' the circumstances in which prior approval by the NJDEP is required for a permit revision are provided.

The circumstances that will require prior NJDEP approval include the seven conditions listed at N.J.A.C. 7:27–8.18(a)(1) through (7). Actions include: (1) A request for an increase in the maximum allowable emission limit (including for corrections and/or miscalculations); (2) an action that will cause an increase of emissions or the emission of a new air contaminant not specified in the permit and certificate; (3) use of a new raw material not specified in the permit if it could result in exceedance of the maximum allowable emission limit or emission of a new air contaminant that meets or exceeds applicable reporting thresholds of N.J.A.C. 7:27–8 Appendix 1, Table A; (4) a reconstruction as described in N.J.A.C. 7:27–8.23, unless the reconstructed source has the potential to emit the air contaminants at an acceptable threshold level in accordance with N.J.A.C. 7:27–8 Appendix 1, Table A; (5) changes that would cause the ground level concentration of an air contaminant to increase in the portion of the atmosphere surrounding the facility and which the public may be impacted by; (6) the replacement of an entire permitted source with a replacement source, except as allowed by N.J.A.C. 7:27–8.21, that will take the place of the replaced source in the manufacturing process, and the replaced source will be permanently shutdown; and (7) the construction or installation of a new significant source that could be combined with an existing permitted source, as allowed under N.J.A.C. 7:27–8.4(h). Lastly, as set forth at N.J.A.C. 7:27–8.18(b), to obtain approval of a permit revision, an applicant must meet the requirements of N.J.A.C. 7:27–8.11, ''Standards for issuing permits''.

The EPA finds the circumstances for which a revision to a permit will be required to obtain prior approval from the NJDEP, to be acceptable. The EPA therefore proposes to approve N.J.A.C. 7:27–8.18 as it was submitted to the EPA by the NJDEP on February 24, 2014, and supplemented on August 23, 2018.

Subchapter 8.19, ''*Compliance Plan Changes*''

Under N.J.A.C. 7:27–8.19, ''Compliance plan changes,'' the circumstances are provided for which prior NJDEP approval is required for a compliance plan change. In accordance with N.J.A.C. 7:27–8.19(b), such compliance plan changes are not to proceed until the NJDEP issues written approval of a change, except for emission decreases that are not reflected in a change to a source's potential to emit made under N.J.A.C. 7:27–8.19(a)4.

The circumstances for which approval of a compliance plan change is required are listed at N.J.A.C. 7:27–8.19(a)(1) through (4). The circumstances include: (1) A decrease in the frequency of testing, monitoring, recordkeeping, or reporting below the frequency specified in a permit and certificate; (2) a change to the monitoring method; (3) a change to a level, rate, or limit of an operational parameter; and (4) a reduction in a source's potential to emit, as provided by a decrease in the maximum allowable hours of operation and/or the maximum allowable production rate. The EPA would like to clarify that a permittee may reduce a source's potential to emit without contacting the NJDEP, but this reduction will not take effect and be federally enforceable until after the NJDEP approves the compliance plan change.

The EPA finds the circumstances under which a compliance plan change requires prior approval from the NJDEP to be acceptable. The EPA therefore proposes to approve N.J.A.C. 7:27–8.19 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.20, ''*Seven-Day-Notice Changes*''

Under N.J.A.C. 7:27–8.20, ''Seven-day-notice changes,'' permittees are provided with the ability to proceed with a change seven days after a seven-day-notice change is submitted to the NJDEP. Notably, under N.J.A.C. 7:27–8.20(a), a permittee acting under the authority of a seven-day-notice change does so at their own risk, and that the permittee may be subject to penalties for noncompliance should the NJDEP determine that an action was incorrectly processed as a seven-day-notice.

A permittee is allowed to proceed with a change at a facility after submitting a seven-day-notice, so long as the change meets the requirements set forth at N.J.A.C. 7:27–8.20(b). The first requirement, under N.J.A.C. 7:27–8.20(b)(1)(i), is that the action is a physical or operational change that is outside the scope of activities allowed by the permit. The second requirement, N.J.A.C. 7:27–8.20(b)(1)(ii), provides that the action must have ''the potential to result in an increase in actual emissions but will not increase emissions over the allowable limits in the permit and certificate.'' The third requirement, N.J.A.C. 7:27–8.20(b)(1)(iii), will allow the use of a seven-day-notice so long as the action would not alter stack parameters or characteristics that could cause ground level concentration of air contaminant to increase in the ambient air surrounding the facility. The NJDEP then reviews the seven-day-notice to determine whether all three requirements are met or if a permit revision is instead required (N.J.A.C. 7:27–8.20(e)). This provision, and the initial acknowledgement of receipt from the NJDEP, indicates that the seven-day-notice does not relieve the owner or operator from liability for penalties for unauthorized activities (N.J.A.C. 7:27–8.20(f)).

The EPA finds the conditions for which a permittee can submit a seven-day-notice for a change at a facility to be acceptable for preserving air quality. The EPA therefore proposes to approve N.J.A.C. 7:27–8.20 as it was submitted to the EPA by the NJDEP on February 24, 2014, and on August 23, 2018.

Subchapter 8.21, ''*Amendments*''

Under N.J.A.C. 7:27–8.21, ''Amendments,'' a permittee is allowed to proceed with a change to a permitted source, its permit, certificate, or to a registration, if a permittee submits a notice of amendment within 120 days of the change. Nonetheless, a permittee is required to maintain a copy of each amendment with the permit and certificate at the facility in accordance with N.J.A.C. 7:27–8.21(c).

In accordance with N.J.A.C. 7:27–8.21(b)(1) through (8), the following changes are required to be submitted to the NJDEP by the permittee, in the form of a notice of amendment: (1) A change in the permit and certificate information which allows the NJDEP to identify and contact the permittee; (2) a transfer of ownership or operational control for the source of a facility; (3) a change to the name, number, or designation for any given source in the permit or certificate; (4) changes to a permitted source's stack or chimney or use therefore as listed under N.J.A.C. 7:27–8.21(b)(4)i through iv, if the change complies with the EPA stack height regulations at 40 CFR part 51; (5) the use of a new raw material in a permitted source that is not specified within the permit; (6) replacement of an entire permitted source with a source that performs the same function and has the potential to emit an air contaminant in an amount less than the applicable SOTA threshold level listed in N.J.A.C. 7:27–8 Appendix 1, Table A; (7) a typographical correction that would result in an increase in the actual or allowable emissions; and (8) a reconstruction, as described in N.J.A.C. 7:27–8.23, that would result in the potential to emit of air contaminants listed in N.J.A.C. 7:27–8 Appendix 1, Table A in amounts less than the applicable SOTA threshold level. Additional details regarding specific conditions and/or circumstances which will require a permittee and/or registrant to meet under the particular circumstances listed at N.J.A.C. 7:27–8.21(b), are provided within N.J.A.C. 7:27–8.21(d) through (f).

The EPA finds the circumstances under which permittees are allowed to submit a notice of amendment within 120 days of the change to be acceptable. The EPA therefore proposes to approve N.J.A.C. 7:27–8.21 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.22, ''*Changes to Sources Permitted Under Batch Plant, Pilot Plant, Dual Plant, or Laboratory Operations Permitting Procedures*''

N.J.A.C. 7:27–8.22, ''Changes to sources permitted under batch plant, pilot plant, dual plant, or laboratory operations permitting procedures,'' provides details on how permittees can make a change to an issued permit using the NJDEP's Batch Production Plant Permit Procedure, Pilot Plant Permit Procedure, Dual Plant Permit Procedure, and Laboratory Operations Permit Procedure.

Per N.J.A.C. 7:27–8.22(a), permittees, seeking to make a change using the Batch Production Plant Permit Procedure, are referred to the procedures in technical manual 1301 which covers certain batch plant permits and is available in the address listed in N.J.A.C. 7:27–8.4(b). Permittees are referred to the procedures in technical manual 1302 which cover changes to a permit using the Pilot Plant Permit Procedure (N.J.A.C. 7:27–8.23(b)) and the Dual Plant Permit Procedure under (N.J.A.C. 7:27–8.22(c)). Per N.J.A.C. 7:27–8.23(d), permittees are referred to technical manual 1211, available at the address listed in N.J.A.C. 7:27–8.4(b), to make a change to a permit using the Laboratory Operations Permit Procedure. However, as provided under N.J.A.C. 7:27–8.22(e), if the technical manuals 1301, 1302, and 1211 do not provide a procedure for making the change a permittee desires, the change should be processed through the applicable provisions of N.J.A.C. 7:27–8.17 through 8.21.

The EPA finds the procedures for which permittees seeking to make a change to a permit issued using either the NJDEP's batch plant, pilot plant, dual plant, or laboratory operations permitting procedures, to be acceptable. While the EPA is not approving the technical manuals themselves because the specific language of the manuals is not included in N.J.A.C. 7:27–8.22 and can be changed, the EPA approves the process set forth in this subsection. The EPA therefore proposes to approve N.J.A.C. 7:27–8.22 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.23, ''*Reconstruction*''

Under N.J.A.C. 7:27–8.23, ''Reconstruction,'' the provisions related to the replacement of parts on a significant source or control apparatus are listed. Reconstruction is described as the replacement of the part(s) on a significant source included in a process unit, or replacement of the part(s) on a control apparatus, so long as the fixed capital cost of replacing the part(s) exceeds both amounts listed under N.J.A.C. 7:27–8.23(a)(1) and (2).

When evaluating whether the cost associated with the replacement of part(s) amounts to being qualified as a reconstruction, N.J.A.C. 7:27–8.23(b) provides that the process unit and the control apparatus are to be considered separately. Under N.J.A.C. 7:27–8.23(c), that the replacement of an entire significant source or control apparatus is not a reconstruction and is instead considered to be a construction as defined at N.J.A.C. 7:27–8.1. Per N.J.A.C. 7:27–8.23(d), reconstruction of a permitted source shall be submitted to the NJDEP and reviewed under the procedures for a permit revision at N.J.A.C. 7:27–8.18, and if a replacement of part(s) is considered to not be a reconstruction, it may still be subject to the requirements of N.J.A.C. 7:27–8.18 through 8.23 if it meets the criteria under those subsections. In accordance with N.J.A.C. 7:27–8.23(e), if a source is not covered by a permit or certificate, and a reconstruction is planned, the owner or operator of the source is required to obtain a permit and certificate pursuant to N.J.A.C. 7:27–8.3(a).

The EPA finds the conditions which constitute the replacement of parts on a significant source or control apparatus as a reconstruction, to be acceptable. The EPA therefore proposes to approve N.J.A.C. 7:27–8.23 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.24, ''*Special Provisions for Construction But Not Operation*''

Under N.J.A.C. 7:27–8.24, ''Special provisions for construction but not operation,'' an applicant will be allowed to undertake certain activities, in particular, construction, reconstruction, installing, and/or putting in place a source while the NJDEP reviews an application under certain circumstances, as is provided in N.J.S.A. 26:2C–9.2(j).

There are five circumstances under which an applicant can alter a source accordingly and they are listed under N.J.A.C. 7:27–8.24(a)1 through 5. These include if: (1) The applicant has submitted a complete application to the NJDEP proposing an activity of the source; (2) the applicant undertakes an activity at the source on footing or a foundation and does not test or operate it; (3) the activity is carried out as proposed in the application; (4) the activity is not prohibited by any Federal

requirement; and (5) all other requirements of this section are met.

Per N.J.A.C. 7:27–8.24(b), applicants will be required to notify the NJDEP seven days prior to beginning the activities listed under N.J.A.C. 7:27–8.24(a)(1) through (5), and in accordance with the procedure for a seven-day-notice change at N.J.A.C. 7:27–8.20, including the associated seven-day-notice fee. N.J.A.C. 7:27–8.24 does not limit the NJDEP's authority to establish construction, installation, maintenance, operating standards, or from reviewing any application, as provided in N.J.A.C. 7:27–8.24(c). Regarding fiscal expenditures, costs incurred by an applicant in connection with actions taken under this subsection may not be used as grounds for an appeal to the NJDEP's decision on an application and an applicant shall be subject to penalties if an action taken under this subsection causes emissions of any air contaminant in a manner that is inconsistent with applicable law under N.J.A.C. 7:27–8.24(d) and (e), respectively.

The EPA finds the guidance allowing for an applicant to construct, reconstruct, install, and/or put in place a source while the NJDEP reviews an application under certain circumstances to be acceptable. The EPA therefore proposes to approve N.J.A.C. 7:27–8.24 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.25, ''Special Provisions for Pollution Control Equipment or Pollution Prevention Process Modifications''

Under N.J.A.C. 7:27–8.25(a), ''Special provisions for pollution control equipment or pollution prevention process modifications,'' the circumstances and associated conditions are provided for the period in which an application is pending, that a private entity, as defined at N.J.A.C. 7:27–8.1, can proceed with: (1) Construction, installation, reconstruction, or operation of control apparatus serving an existing source; or (2) implementation of a pollution prevention process modification, as defined at N.J.A.C. 7:27–8.1, involving one or more existing sources, as provided by N.J.S.A. 26:2C–9.3 and 9.4.

Notwithstanding the circumstances referenced in N.J.A.C. 7:27–8.25(a), applicants are not authorized to conduct any activities listed in N.J.A.C. 7:27–8.25(b)(1) through (4), including activities that are prohibited by the CAA, will result in increased emissions, will result in the emission of an air contaminant not previously emitted, and will result in air contaminant emissions not authorized by a permit or certificate. Moreover, to act under the authority of this section, per N.J.A.C. 7:27–8.25(c), an applicant will be required to have submitted a complete application covering activities listed under N.J.A.C. 7:27–8.25(b) and have notified the NJDEP seven days prior to beginning activities listed under N.J.A.C. 7:27–8.25(b).

Notably, under N.J.A.C. 7:27–8.25(d), an applicant acting under the authority of this section assumes all risks, since the applicant may be subject to penalties for noncompliance should the applicant commence proposed activities and the NJDEP does not approve the proposed action. Costs incurred by an applicant in connection with actions taken under this subsection will not be used as grounds for an appeal of the NJDEP's decision for an application under N.J.A.C. 7:27–8.25(f). Per, N.J.A.C. 7:27–8.25(e) clarifies that N.J.A.C. 7:27–8.25 does not limit the NJDEP in establishing standards or reviewing any application. As detailed under N.J.A.C. 7:27–8.25(g), if the NJDEP determines the actions taken at risk by the applicant are inconsistent with applicable law, the applicant and the NJDEP are to enter into an agreement that provides a date by which the applicant will comply with the law. If the applicant and the NJDEP fail to enter into an agreement, the NJDEP may issue a schedule with a compliance date. If an applicant fails to comply with the NJDEP's schedule, the applicant will be subject to penalties if the applicant's actions have resulted in the emission-related consequences listed in N.J.A.C. 7:27–8.25(h)(1–3).

The EPA finds the circumstances and conditions which private entities have permission to proceed with: (1) Construction, installation, reconstruction, or operation of control apparatus serving an existing source; and (2) implementation of a pollution prevention process modification, to be sufficient for ensuring compliance with the subchapter. The EPA therefore proposes to approve N.J.A.C. 7:27–8.25 as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.26, ''Civil or Criminal Penalties for Failure To Comply''

Under N.J.A.C. 7:27–8.26, ''Civil or criminal penalties for failure to comply,'' any person that fails to conform with the requirements of subchapter 8 is subject to civil penalties in accordance with N.J.A.C. 7:27A–3, or criminal penalties pursuant to N.J.S.A. 26:2C–19(f), or both. The EPA finds this to be adequate for ensuring compliance with the provisions under Subchapter 8 and is therefore proposing to approve N.J.A.C. 7:27–8.26, as it was submitted to the EPA on February 24, 2014.

Subchapter 8.27, ''Special Facility-Wide Permit Provisions''

Under N.J.A.C. 7:27–8.27, ''Special facility-wide permit provisions,'' unique circumstances are provided in which the holder of a facility-wide permit, as defined at N.J.A.C. 7:27–8.1, is not required to obtain a permit and certificate for a planned action or change.

The circumstances in which the holder of facility-wide permit is not required to obtain a permit and certificate for a planned action or change are listed at N.J.A.C. 7:27–8.27(a)(1) through (3). The circumstances include when a production process that is affected by the action or change is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D–35 *et seq.* It also includes circumstances when the planned action or change is adequately documented in a modification to a Pollution Prevention Plan or in a Pollution Prevention Assessment, as defined in N.J.A.C. 7:1K–5, (N.J.A.C. 7:27–8.27(a)(2)(i) and (ii)) and the planned action or change does not cause an increase or exceedance of certain parameters beyond levels listed at N.J.A.C. 7:27–8.29(a)(3)(i–iv). Within 120 days of commencement of an action or change allowed under N.J.A.C. 7:27–8.27(a) a permittee will be required to submit an amendment to the facility-wide permit alongside a copy of the Pollution Prevention Plan Modification or Pollution Prevention Assessment (N.J.A.C. 7:27–8.27(b)). Lastly, per N.J.A.C 7:27–8.27(c), if a permittee makes a change which does not meet the criteria under N.J.A.C. 7:27–8.27(a), a new permit will be required, or that the change be processed in accordance with the procedures for changing an existing permit under N.J.A.C. 7:27–8.17 through 8.22.

The EPA finds the circumstances under which the holder of facility-wide permit will not be required to obtain a permit and certificate for a planned action or change to be acceptable. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.27, as it was submitted to the EPA by the NJDEP on February 24, 2014.

Subchapter 8.28, ''Delay of Testing''

N.J.A.C. 7:27–8.28, ''Delay of testing,'' lists the circumstances and conditions under which a permittee can seek the NJDEP's approval to delay tests required under N.J.A.C. 7:27–8.4(f), 8.7(f), and 8.13(d).

Permittees seeking to delay testing must submit a request for the NJDEP's approval at the contact information/addresses provided in N.J.A.C. 7:27–8.28(a)(1). Any request to delay testing must include, at minimum, information listed under N.J.A.C. 7:27–8.28(a)(2)(i–iii), which includes a justification why the delay is needed and a proposed test date. The NJDEP must approve each initial delay request of up to 90 days, and any subsequent request for a delay in testing, if one or more specific criteria under N.J.A.C. 7:27–8.28(a)(3)(i–iv) are met. Finally, as provided under N.J.A.C. 7:27–8.28(b), a permittee may include a waiver of its right to assert that its emissions during the period of delay were any different than the emissions measured by the test when performed.

The EPA finds these circumstances and conditions for delaying a test required under N.J.A.C. 7:27–8.4(f), 8.7(f), and 8.13(d) to be adequate for ensuring compliance with the provisions under Subchapter 8. The EPA is therefore proposing to approve N.J.A.C. 7:27–8.28, as it was submitted to the EPA by the NJDEP on February 24, 2014.

III. Environmental Justice Considerations

New Jersey supplemented this SIP revision on May 16, 2023 and December 3, 2024. The supplemental submissions briefed the EPA on Environmental Justice (EJ) considerations within New Jersey by detailing the State's programs and initiatives addressing the needs of communities with EJ concerns that have been ongoing since 1998. To clarify, although New Jersey included environmental justice considerations as part of its SIP submittal, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation.

In its supplement, New Jersey discusses addressing the needs of communities starting with the creation of the Environmental Equity Task Force in 1998, which eventually became the Environmental Justice Advisory Council (EJAC). New Jersey states that this group holds regular meetings that include EJ advocates and the NJDEP to discuss and address environmental justice issues of concern.

New Jersey also details having implemented numerous initiatives, collaborations, Administrative Orders and Executive Orders to address the needs and concerns of overburdened communities. A timeline of New Jersey's EJ actions implemented, including both prior to and after the two SIP submittals addressed within this notice, was provided and is indicative of the State's continued attention to EJ issues within the State.

Administrative Orders (AO) and Executive Orders (E.O.) include New Jersey's first EJ E.O. issued by Governor James E. McGreevey in 2004 (E.O. No. 96), an EJ E.O. issued by Governor Jon Corzine in 2009 (E.O. No. 131), an EJ AO issued by NJDEP Commissioner Bob Martin in 2016 (AO 2016–08) and an EJ E.O. issued by Governor Phil Murphy in 2018 (E.O. No. 23). The supplement also mentions that U.S. Senator for New Jersey, Cory Booker, introduced the first Federal EJ bill in 2017 (S.1996—Environmental Justice Act of 2017).

In addition, New Jersey references the creation of the ''What's In My Community'' [13] tool that identifies the overburdened communities, schools, and emergency services and where public users can see measurements from air monitors

The EPA would like to clarify that since New Jersey's provisions being proposed for approval by the EPA with this notice address statewide matters, and since EJ issues are more accurately captured when evaluating relatively smaller areas or on a community level basis, the EPA determined it would not have been appropriate to evaluate the impact of proposed revisions to New Jersey's SIP on communities with EJ concerns at a statewide level. As previously stated, the CAA and applicable implementing regulations neither prohibit nor require such an evaluation of EJ. In addition, there is no information in the record indicating that this action is inconsistent with the stated goal of E.O. 12898 and E.O. 14096, and/or that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

Based on the EPA's review of New Jersey's supplement, the EPA expects that this proposed action will generally be neutral or contribute to reduced environmental and health impacts on all populations within New Jersey, including on communities with EJ concerns. At a minimum, this action is not expected to worsen any air quality and it is expected that this action will ensure the State is meeting requirements to attain and/or maintain air quality standards. New Jersey evaluated its EJ considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation, and the EPA's discussion of New Jersey's EJ considerations was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of the State's evaluation of EJ.

[13] Mapping application used to find facilities with an air permit registered with New Jersey's Division of Air Quality, *https://njdep.maps.arcgis.com/apps/webappviewer/index.html?id=76194937cbbe46b1ab9a9ec37c7d709b.*

IV. The EPA's Proposed Action

The EPA proposes to approve New Jersey's revisions to N.J.A.C. 7:27–8, ''Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit),'' which will incorporate regulations under N.J.A.C. 7:27 8.2 through 8.28 into the State' SIP, that had a State effective of September 19, 2011, and January 16, 2018. The EPA is soliciting public comments on provisions proposed for adoption into New Jersey's SIP and as discussed within this notice. These comments will be considered before the EPA takes final action.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to N.J.A.C. 7:27–8, ''Permits and Certificates for Minor Facilities (and Major Facilities without an Operating Permit),'' section 8.2, ''Applicability'' (except for N.J.A.C. 7:27–8.2(d)(3)(ii)(2) and N.J.A.C. 7:27–8.2(e)(2)(ii)); section 8.3, ''General provisions'' (except for N.J.A.C. 7:27–8.3(j) and (n)); section 8.4, ''How to apply, register, submit a notice, or renew'' (except for N.J.A.C. 7:27–8.4(k)(2) and (q)); section 8.5, ''Air quality impact analysis;'' section 8.6, ''Service fees;'' section 8.7, ''Operating certificates;'' section 8.8, ''General permits;'' section 8.9, ''Environmental improvement pilot tests;'' section 8.10, ''Public comment;'' section 8.11, ''Standards for issuing a permit;'' section 8.12, ''State of the art;'' section 8.13, ''Conditions of approval;'' section 8.14, ''Denials;'' section 8.15, ''Reporting requirements;'' section 8.16, ''Revocation;'' section 8.17, ''Changes to existing permits and certificates;'' section 8.18, ''Permit revisions;'' section 8.19, ''Compliance plan changes;'' section 8.20, ''Seven-day-notice changes;'' section 8.21, ''Amendments;'' section 8.22, ''Changes to sources permitted under batch plant, pilot plant, dual plant, or laboratory operations permitting procedures;'' section 8.23, ''Reconstruction;'' section 8.24, ''Special provisions for construction but not operation;'' section 8.25, ''Special provisions for pollution control

equipment or pollution prevention process modifications;'' section 8.26, ''Civil or criminal penalties for failure to comply;'' section 8.27, ''Special facility-wide permit provisions;'' and section 8.28, ''Delay of testing;'' as described in section II of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with EJ concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The NJDEP considered EJ as part of its SIP submittal given that the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA's review of the NJDEP's EJ considerations is described above in the section titled, ''Environmental Justice Considerations.'' The consideration was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of the consideration of EJ. 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. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

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

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2024–29525 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2024–0079; FRL–12386–01–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (24–3.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing 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 who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rulemaking to notify EPA at least 90 days before commencing that activity. 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: Comments must be received on or before January 16, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0079, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information: Jordan Garbin, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection

Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4156; email address: *garbin.jordan@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) (see also the discussion in Unit II.).

B. What action is the Agency taking?

EPA is proposing SNURs for the chemical substances discussed in Unit III. These SNURs, if finalized as proposed, would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

C. Does this action apply to me?

1. General Applicability

This action applies to you if you manufacture, process, or use the chemical substances contained in this proposed rule. 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 the EPA policy in support of import certification at 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 that is the subject of this proposed rule on or after January 16, 2025 are subject to 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 (including importers) and processors of the chemical substances subject to these proposed SNURs. This analysis, which is available in the docket, is briefly summarized here.

1. Estimated Costs for SNUN Submissions

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)) per fiscal year 2022. The costs of submission for SNUNs will not be incurred by any company unless a company decides to pursue a significant new use as defined in these SNURs. Additionally, 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 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.

E. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit CBI to EPA through email or *https://www.regulations.gov*. If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR parts 2 and 703.

2. Tips for Preparing Your Comments

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets*.

II. Background

This unit provides general information about SNURs. For additional information about EPA's new chemical program go to *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca*.

A. Significant New Use Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing,

processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit and discussed in Unit III.

These proposed 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). The TSCA orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The proposed 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).

B. Rationale and Objectives of the SNURs

1. Rationale

Under TSCA, no person may manufacture a new chemical substance or manufacture or process a chemical substance for a significant new use until EPA makes a determination as described in TSCA section 5(a) and takes any required action. The issuance of a SNUR is not a risk determination itself, only a notification requirement for ''significant new uses,'' so that the Agency has the opportunity to review the SNUN for the significant new use and make a TSCA section 5(a)(3) risk determination.

During review of the PMNs submitted that are the subject to these proposed SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. Based on the findings outlined in Unit III., TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow the TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

2. Objectives

EPA is proposing these SNURs because the Agency wants:

- To 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).
- To have an opportunity to review and evaluate data submitted in a SNUN before the submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under TSCA section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

Issuance of a proposed 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 at *https://www.epa.gov/tsca-inventory.*

C. Significant New Uses Claimed as CBI

EPA is proposing to establish certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 703. Absent a final determination or other disposition of the confidentiality claim under these regulations, EPA is required to keep this information confidential. EPA promulgated a procedure at 40 CFR 721.11 to deal with the situation where a specific significant new use is CBI. Under these procedures. a manufacturer or processor may request EPA to identify the confidential significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will identify the confidential significant new use to that person. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.11 into a single step.

D. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to SNURs, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Pursuant to 40 CFR 721.1(c), persons subject to SNURs must comply with the same requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. In addition, provisions relating to user fees appear at 40 CFR part 700.

Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination under TSCA section 5 before the manufacture (including import) or processing for the significant new use can commence. If EPA determines that the significant new use of the chemical substance is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

As discussed in Unit I.C.2., persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b), and persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements. See also *https://www.epa.gov/tsca-import-export-requirements.*

E. Applicability of the Proposed SNURs to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review and

received determinations under TSCA section 5(a)(3)(C). TSCA Orders have been issued for these chemical substances and the PMN submitters are required by the TSCA Orders to submit a SNUN before undertaking activities that would be designated as significant new uses in these SNURs. Additionally, the identities of many of the chemical substances subject to this proposed rule have been claimed as confidential per 40 CFR 720.85, further reducing the likelihood that another party would manufacture or process the substances for an activity that would be designated as a significant new use. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses identified in Unit III. are ongoing.

When the chemical substances identified in Unit III. are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. Persons who begin manufacture or processing of the chemical substances for a significant new use identified on or after the designated cutoff date specified in Unit III.A. 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 EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

F. 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 identified for the chemical substance in Unit III.C.

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 sections 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 that provide detailed information on the human exposure and environmental release that may result from the significant new use of the chemical substances.

III. Chemical Substances Subject to These Proposed SNURs

A. What is the designated cutoff date for ongoing uses?

EPA designates December 17, 2024 as the cutoff date for determining whether the new use is ongoing. This designation is explained in more detail in Unit II.E.

B. What information is provided for each chemical substance?

For each chemical substance identified in Unit III.C., EPA provides the following information:

- PMN number (the proposed CFR citation assigned in the regulatory text section of the proposed rule).
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service Registry Number (CASRN) (if assigned for non-confidential chemical identities).
- Basis for the action (effective date of and basis for the TSCA Order).
- Potentially useful information.

The regulatory text section of the proposed rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the proposed rules, may be claimed as CBI.

These proposed rules 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. The proposed 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).

C. Which chemical substances are subject to these proposed rules?

The substances subject to the proposed rules in this document are as follows:

PMN Number (Proposed CFR Citation): P–18–127 (40 CFR 721.12043)

Chemical Name: Heptane, 2-methoxy-2-methyl-.

CASRN: 76589–16–7.

Effective Date of TSCA Order: December 15, 2023.

Basis for TSCA Order: The PMN states that the use will be as a fragrance for household and consumer products, mainly laundry detergents. Based on submitted test data on the PMN substance, EPA has identified concerns for skin sensitization. Based on comparison to analogous chemical substances, EPA has also identified concerns for systemic and developmental effects. Based on submitted test data on the PMN substance, EPA predicts toxicity to

aquatic organisms may occur at concentrations that exceed 210 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- Manufacture of the PMN substance only by import into the United States in a solution of no greater than 5% by weight (*i.e.,* no domestic manufacture);
- Processing of the PMN substance only in a solution of no greater than 5% by weight of the PMN substance;
- Processing for use or use of the PMN substance in consumer products only if the concentration of the PMN substance is less than 1% by weight;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 210 ppb;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of developmental toxicity, specific target organ toxicity, and pulmonary effects testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–18–325 (40 CFR 721.12044)

Chemical Name: Benzenesulfonic acid, alkyl-, compd. with 1,1′-iminobis[2-propanol] (1:1) (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 9, 2024.

Basis for TSCA Order: The PMN states that the use will be as an industrial crosslinking catalyst. Based on the structure of the anion, EPA identified concerns for lung toxicity (surfactant effects). Based on test data for the neutral form of the cation and analogues for the anion, EPA also identified concerns for skin and eye irritation, and systemic and reproductive effects. Based on comparison to analogous anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 0.4 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure to the PMN substance;
- No processing for use or use of the PMN substance other than as an industrial cross-linking catalyst;
- No release of the PMN substances, or any waste stream containing the PMN substances, into waters of the United States;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation/corrosion, eye irritation/corrosion, pulmonary effects, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–20–14 (40 CFR 721.12045)

Chemical Name: Sugars, polymer with alkanetriamine (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 27, 2023.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a water resistant resin additive. Based on comparison to analogous chemical substances, EPA has identified concerns for systemic effects (body weight). Based on potential chelation to nutrient metals, EPA has also identified concerns for developmental and systemic effects. Based on submitted test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 191 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No use of the PMN substance in a consumer product;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 191 ppb;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of reproductive toxicity and specific target organ toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–21–86 (40 CFR 721.12046)

Chemical Name: Isooctadecanamide, N,N-bis(2-ethylhexyl)-.

CASRN: 1616494–50–8.

Effective Date of TSCA Order: February 6, 2024.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as an automotive engine

additive. Based on test data for the metabolite, EPA has identified concerns for systemic effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

- No processing for use of the PMN substance in a consumer product where the concentration of the PMN substance in the consumer product formulation exceeds the confidential percentage listed in the Order;
- No use of the PMN substance in a consumer product where the concentration of the PMN substance exceeds the confidential percentage listed in the Order;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of metabolism or pharmacokinetics and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–21–164 (40 CFR 721.12047)

Chemical Name: 2-Butanone, oxime, reaction products with trimethoxymethylsilane.

CASRN: 2639393–45–4.

Effective Date of TSCA Order: November 13, 2023.

Basis for TSCA Order: The PMN states that the use will be as a crosslinker for waterproofing. Based on comparison to analogous chemical substances, EPA has identified concerns for irritation to skin and eyes and systemic effects. Based on test data for hydrolysis products, EPA has also identified concerns for acute toxicity, skin irritation, eye corrosion, respiratory tract irritation and corrosion, skin sensitization, systemic effects, developmental effects, neurotoxicity and carcinogenicity. Based on test data for hydrolysis products, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 102 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No use of the PMN substance unless at 4% or less by weight in formulation;
- No loading or unloading of the PMN substance for manufacture, processing, or use unless under a gas (*e.g.,* nitrogen) blanket;
- Application of the PMN substance for use only by roll, brush, or dip coating;
- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified combination particulate and gas/vapor respirator with an APF of at least 50 where there is a potential for inhalation exposure;
- Disposal of the PMN substance, or waste streams containing the PMN substance, only by incineration;
- No release of the PMN substance, or any waste stream containing the PMN substance, into waters of the United States; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute toxicity, carcinogenicity, eye damage, pulmonary effects, skin irritation, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–21–170 (40 CFR 721.12048)

Chemical Name: 2,6-Bis(dialkyl)-4-[2-(1-alkyl-4(1H)-pyridinylidene)alkylidene]-2,5-cycloalkyladien-1-one (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 27, 2024.

Basis for TSCA Order: The PMN states that the use will be as a color indicator for frying oil breakdown. Based on comparison to analogous chemical substances, EPA has identified concerns for irritation to skin and eyes, skin sensitization, neurotoxicity, systemic effects (respiratory tract, lung, liver, kidney, spleen, and body weight effects), reproductive and developmental effects, genotoxicity, carcinogenicity, and acute toxicity (mortality). Based on OECD Toolbox results, EPA identified concerns for skin sensitization and based on information provided in the SDS, EPA has also identified concerns for acute toxicity and irritation to skin, eyes, and respiratory tract. Based on comparison to analogous chemical substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- Manufacture of the PMN substance only below an annual volume of 10 kg;
- No manufacture, processing, or use of the PMN substance resulting in releases to air except with the use of a HEPA filtration system;
- No processing for use or use of the PMN substance other than as a color indicator for frying oil breakdown;
- No processing for use or use of the PMN substance where the concentration of the PMN substance in the final product exceeds 0.008%;
- No release of the PMN substance, or any waste stream containing the PMN substance, into waters of the United States;
- Use of a NIOSH-certified particulate respirator with an APF of at least 10 where there is a potential for inhalation exposure;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of biodegradation, bioaccumulation, log P, and aquatic toxicity testing may be potentially useful to characterize the physical/chemical properties and environmental fate/effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–21–184 (40 CFR 721.12049)

Chemical Name: Fatty acids, soya, reaction products with ammonia-ethanolamine reaction by-products.

CASRN: 2378512–59–3.

Effective Date of TSCA Order: November 16, 2023.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be in asphalt emulsion applications. Based on comparison to analogous chemical substances, EPA has identified concerns for acute toxicity, skin and eye irritation/corrosion, skin sensitization, point-of-contact effects, lung effects, and systemic effects. Based on the surfactant-like properties of the PMN substance and its use as an emulsifier, EPA has also identified concerns for lung effects (surfactancy). Based on information in the SDS, EPA has also identified concerns for skin irritation, eye corrosion, and respiratory irritation. Based on comparison to analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No manufacture, processing, or use of the PMN substance in any manner that results in the generation of vapor, mist, dust, or aerosol;
- No processing for use or use of the PMN substance in a consumer product;
- Use of personal protective equipment where there is a potential for dermal exposure;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 2 ppb; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute toxicity, specific target organ toxicity, pulmonary effects, skin irritation/corrosion, eye damage, neurotoxicity, skin sensitization, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Numbers (Proposed CFR Citations): P–22–3 (40 CFR 721.12050), P–22–4 (40 CFR 721.12051), P–22–5 (40 CFR 721.12052), and P–22–6 (40 CFR 721.12053)

Chemical Names: 1,5-Pentanediamine, 2-methyl-, hydrochloride (1:2) (P–22–3), 1,5-Pentanediamine, 2-methyl-, hydrochloride (1:1) (P–22–4), Formic acid, compd. with 2-methyl-1,5-pentanediamine (2:1) (P–22–5), and Formic acid, compd. with 2-methyl-1,5-pentanediamine (1:1) (P–22–6).

CASRNs: 34813–63–3 (P–22–3), 1840915–04–9 (P–22–4), 1836131–73–7 (P–22–5), and 1836131–75–9 (P–22–6).

Effective Date of TSCA Order: December 4, 2023.

Basis for TSCA Order: The PMNs state that the uses will be as clay stabilizers for oil and gas fracking. Based on submitted test data on the P–22–3 substance, comparison to analogous chemical substances, structure and expected acidity or basicity of components, physical/chemical properties of components, and information provided in the SDS, EPA has identified concerns for acute toxicity, irritation or corrosion to skin, eyes, and respiratory tract, and systemic effects. Based on submitted test data for the P–22–3 substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 570 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No processing for use or use of the PMN substances in consumer products;
- No manufacture, processing, or use of the PMN substances in any manner that results in inhalation exposure to the PMN substances;
- Use of personal protective equipment where there is a potential for dermal exposure;
- No release of the PMN substances, or any waste stream containing the PMN substances, in surface water concentrations that exceed 570 ppb combined; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of eye irritation/corrosion, skin irritation/corrosion, specific target organ toxicity, pulmonary effects, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–11 (40 CFR 721.12054)

Chemical Name: Alkadiene, homopolymer, hydroxy-terminated, bis[N-[2-[(1-oxo-2-propen-1-yl)oxylethyl]carbamates] (generic).

CASRN: Not available.

Effective Date of TSCA Order: November 27, 2023.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a functionalized rubber in the resin side of two component epoxy

modified acrylic adhesive and as a functionalized rubber in the resin side of two component acrylic adhesive. Based on test data on one or both of the two components in the formulation, EPA has identified concerns for skin sensitization, and systemic, reproductive, and developmental effects. Based on the weight of the scientific evidence, EPA has also identified concerns for respiratory sensitization. Based on information in the SDS, EPA has also identified concerns for skin sensitization and reproductive toxicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

- No use of the PMN substance in a consumer product;
- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin sensitization, developmental toxicity, reproductive toxicity, and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–25 (40 CFR 721.12055)

Chemical Name: Oxirane, 2-(chloromethyl)-, homopolymer, ether with dialkyl-alkanediol (2:1) (generic).

CASRN: Not available.

Effective Date of TSCA Order: February 20, 2024.

Basis for TSCA Order: The PMN states that the use will be as a chemical intermediate. Based on comparison to analogous chemical substances and structural alerts, EPA has identified concerns for acute toxicity, irritation to the respiratory tract, skin, and eyes, systemic effects, genetic toxicity, and carcinogenicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

- No exceedance of the confidential annual production volume listed in the Order;
- No manufacture, processing, or use of the PMN substance in any manner that results in the generation of a vapor, mist, dust, or aerosol;
- Use of the PMN substance only as a chemical intermediate;
- Disposal of the PMN substance, or waste streams containing the PMN substance, only by hazardous waste incineration;
- No release of the PMN substance, or any waste stream containing the PMN substance, into waters of the United States;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute toxicity, specific target organ toxicity, pulmonary effects, eye irritation, skin irritation, genetic toxicity, and carcinogenicity testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–49 (40 CFR 721.12056)

Chemical Name: Aryl, polymer with formaldehyde, glycidyl ether, reaction products with amino alkyl-alkane diamine, cyclohexanediamine and alkylene (alkylcyclohexanamine) (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 11, 2024.

Basis for TSCA Order: The PMN states that the use will be as a hardener in coatings for oil and gas, power, and chemical/petrochemical industries for tank and pipe linings and for asset protection, in coatings in wastewater applications industries for tank and pipe linings and for asset protection, in coatings used in manufacturing industries for tank and pipe linings and for asset protection, and in OEM automotive and heavy industrial machinery coatings. Based on submitted test data on the PMN substance, EPA has identified concerns for acute toxicity. Based on residual data, EPA has also identified concerns for irritation to the skin, eye, and respiratory tract, skin and respiratory sensitization, systemic, developmental, and reproductive effects, corrosion to all tissues, and genetic toxicity. Based on submitted test data on the PMN substance and comparison to analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 2 ppb;
- Use of a NIOSH-certified particulate respirator with an APF of at least 1,000 where there is a potential for inhalation exposure;
- No use of the PMN substance in a consumer product;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has

determined that the results of skin irritation, skin corrosion, eye irritation, eye corrosion, specific target organ toxicity, pulmonary effects, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–50 (40 CFR 721.12057)

Chemical Name: Alkene, alkoxy-, polymer with alkoxyalkene (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 8, 2024.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a lubricant. Based on comparison to analogous chemical substances, EPA has identified concerns for skin, eye, and respiratory tract irritation and systemic effects. Based on comparison to analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 32 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No processing for use or use of the PMN substance in a consumer product;
- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure to the PMN substance;
- No processing for use or use of the PMN substance other than for the confidential use listed in the Order;
- No release of the PMN substance, or any waste stream containing the PMN substance, into waters of the United States;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, skin irritation, eye irritation, pulmonary effects, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–58 (40 CFR 721.12058)

Chemical Name: Methanesulfonamide, 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]-, sodium salt (1:1).

CASRN: 91742–21–1.

Effective Date of TSCA Order: February 13, 2024.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a process chemical. Based on submitted test data on the PMN substance, EPA has identified concerns for acute toxicity and serious eye damage. Based on comparison to analogous chemical substances, EPA has also identified concerns for respiratory tract and skin irritation, neurotoxicity, systemic, reproductive, and developmental effects. Based on comparison to analogous chemical substances, EPA has also identified concerns for respiratory, systemic, and neurological effects for the potential incineration product of the anion. Based on submitted test data on the PMN substance and comparison to analogous substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 140 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No manufacture of the PMN substance other than in an enclosed process;
- No processing or use of the PMN substance other than in a manner that does not generate a vapor, mist, dust, or aerosol that results in inhalation exposure to workers;
- No use of the PMN substance other than for the confidential use listed in the Order;
- No use of the PMN substance other than in the form of a liquid;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 100 ppb;
- Use of a NIOSH-certified combination particulate and gas/vapor respirator with an APF of at least 50 where there is a potential for inhalation exposure;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, pulmonary effects, reproductive toxicity, developmental toxicity, neurotoxicity, sediment toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–75 (40 CFR 721.12059)

Chemical Name: 1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl)-.

CASRN: 15458–48–7.

Effective Date of TSCA Order: January 19, 2024.

Basis for TSCA Order: The PMN states that the use will be as a monomer used to produce an unsaturated polyester resin. Based on comparison to analogous chemical substances, EPA has identified concerns for acute toxicity, skin and eye irritation, and systemic effects. Based on comparison to analogous imides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 21 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

• Manufacture of the PMN substance only at or below an annual volume of 3,000 kg;
• No domestic manufacture of the PMN substance (*i.e.,* import only);
• No use of the PMN substance other than as a monomer used to produce an unsaturated polyester resin;
• Use of personal protective equipment where there is a potential for dermal exposure; and
• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute toxicity, eye irritation, skin irritation, pulmonary effects, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–78 (40 CFR 721.12060)

Chemical Name: Oxirane, 2-methyl-, polymer with oxirane, mono-isoalkyl ethers, phosphates, salt (generic).

CASRN: Not available.

Effective Date of TSCA Order: November 27, 2023.

Basis for TSCA Order: The PMN states that the use will be as a dispersing agent for pesticide formulations. Based on structure, EPA has identified concerns for lung effects (surfactancy). Based on comparison to analogous chemical substances, EPA has also identified concerns for skin irritation and systemic effects. Based on comparison to analogous anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 23 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

• No processing for use or use of the PMN substance other than as a dispersing agent for pesticide formulations;
• No manufacture or processing of the PMN substance in any manner that results in the generation of a vapor, mist, dust, or aerosol;
• Use of personal protective equipment where there is a potential for dermal exposure;
• No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 23 ppb; and
• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects, skin irritation, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–80 (40 CFR 721.12061)

Chemical Name: Poly(oxy-1,2-ethanediyl), .alpha.-(2-aminoethyl)-.omega.-(2-aminoethoxy)- and Poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′,-(iminodi-2,1- ethanediyl)bis[.omega.-(2-aminoethoxy)-.

CASRNs: 24991–53–5 and 90350–34–8.

Effective Date of TSCA Order: December 1, 2023.

Basis for TSCA Order: The PMN states that the use will be as an industrial intermediate used in the manufacture of polyamides as a monomer. Based on the pH of the PMN substance, EPA has identified concerns for skin, eye, and respiratory tract corrosion. Based on comparison to analogous chemical substances, EPA has also identified concerns for acute toxicity and skin sensitization. Based on comparison to analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 0.7 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

• No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure;
• No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 0.7 ppb;
• Use of personal protective equipment where there is a potential for dermal exposure; and
• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute toxicity, skin corrosion, eye corrosion, pulmonary effects, skin sensitization, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–82 (40 CFR 721.12062)

Chemical Name: Alkenoic acid, alkyl, carbopolycyclic alkyl ester, polymer with trihalo (trihaloalkyl) alkyl alkyl alkenoate (generic).

CASRN: Not available.

Effective Date of TSCA Order: November 3, 2023.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a component of photoresist. Based on test data on the degradation product and an analogue of the degradation product, EPA has identified concerns for neurotoxicity, reproductive, developmental, and systemic effects. Based on the potential incineration product, EPA has also identified concerns for systemic effects, and neurotoxicity. The Order was issued under TSCA sections

5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

- No manufacture of the PMN substance other than by import into the United States (*i.e.,* no domestic manufacture) in a liquid formulation;
- No processing or use of the PMN substance other than in a liquid formulation;
- Use of the PMN substance only for the confidential use listed in the Order;
- No release of the PMN substance, or any waste stream containing the PMN substance, into waters of the United States;
- Disposal of the PMN substance, or waste streams containing the PMN substance, only by incineration;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects, reproductive and developmental effects, and neurotoxicity testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–121 (40 CFR 721.12063)

Chemical Name: Polychloroalkene (generic).

CASRN: Not available.

Effective Date of TSCA Order: February 6, 2024.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a process intermediate. Based on submitted test data on the PMN substance and information in the SDS, EPA has identified concerns for acute toxicity (oral) and skin sensitization. Based on test data for analogues, EPA identified concerns for acute toxicity (oral, inhalation), skin irritation, eye corrosion, respiratory irritation, genotoxicity, carcinogenicity, and systemic effects. Based on submitted acute test data and comparison to analogous chemical substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 0.15 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No domestic manufacture of the PMN substance (*i.e.,* import only);
- No processing, use, loading, or unloading of the PMN substance unless under a gas (*e.g.,* nitrogen) blanket or in a closed system except that sampling may occur outside the closed system resulting in exposures;
- No use of the PMN substance other than for the confidential use listed in the Order;
- Use of a NIOSH-certified combination particulate and gas/vapor respirator with an APF of at least 50 where there is a potential for inhalation exposure;
- Use of personal protective equipment where there is a potential for dermal exposure;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 0.15 ppb; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results carcinogenicity, eye irritation/corrosion, genetic toxicity, pulmonary effects, skin irritation, specific target organ toxicity, toxicokinetics, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–145 (40 CFR 721.12064)

Chemical Name: Alkanoic acid, trialkyl-, diester with carbomonocycle bis(alkyleneoxy)]bis[alkanediol] (generic).

CASRN: Not available.

Effective Date of TSCA Order: February 21, 2024.

Basis for TSCA Order: The PMN states that the use will be as a reactive-diluent in a polyol component of a 2K (Isocyanate-Polyol) Urethane coating system for interior concrete floor sealant or interior/exterior paver sealer. Based on the physical/chemical properties of the PMN substance (as described in the New Chemical Program's PBT category at 64 FR 60194; November 1999) and test data on structurally similar substances, the PMN substance is a potentially persistent, bioaccumulative, and toxic (PBT) chemical. EPA estimates that the PMN substance will persist in the environment for more than six months and estimates a bioconcentration factor of greater than or equal to 5,000. Based on test data for a potential hydrolysis product, EPA has identified concerns for acute toxicity and systemic, reproductive, and developmental effects. Based on comparison to analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 0.14 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No use of the PMN substance in any manner that generates a spray, mist, vapor, or aerosol containing the PMN substance unless the concentration of the PMN substance is less than 5.7% by weight;
- No processing for use or use of the PMN substance in a consumer product;
- No release of the PMN substance, or any waste stream containing the PMN substance, into waters of the United States;
- Disposal of the PMN substance, or waste streams containing the PMN substance, only by incineration;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of acute toxicity, reproductive toxicity, developmental toxicity, specific target organ toxicity, toxicokinetics, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–22–175 (40 CFR 721.12065)

Chemical Name: Modified Silsesquioxane, alkoxy-terminated (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 30, 2024.

Basis for TSCA Order: The PMN states that the use will be as a curable binder resin for composite stone articles (engineered stone). Based on comparison to analogous alkoxysilanes and other analogous chemical substances, EPA has identified concerns for lung toxicity. Based on the reactivity of the PMN substance and the low molecular weight fraction content, EPA has also identified concerns for irritation to the skin, eyes, and respiratory tract. Based on comparison with analogous chemical substances, EPA has also identified concerns for hematological effects (*i.e.,* increased neutrophils, eosinophils, lymphocytes) associated with lung toxicity. Based on comparison to analogous alkoxysilanes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No domestic manufacture of the PMN substance (*i.e.,* import only);
- Use of the PMN substance only if the concentration of the PMN substance does not exceed 10% by weight in formulation;
- Use of a NIOSH-certified respirator with an APF of at least 10 where there is a potential for inhalation exposure;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 7 ppb;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation, specific target organ toxicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–23–18 (40 CFR 721.12066)

Chemical Name: Vegetable oil, polymer with pimelin ketone, oxymethylene and polymethylenepolyphenylene isocyanate (generic).

CASRN: Not applicable.

Effective Date of TSCA Order: February 23, 2024.

Basis for TSCA Order: The PMN states that the use will be as an industrial adhesive. Based on the weight of the scientific evidence, EPA has identified concerns for skin and respiratory sensitization and lung toxicity for the PMN substance and the low molecular weight fraction. Based on test data for residuals and comparison to analogous chemical substances of the residuals, EPA has also identified acute toxicity, irritation to the skin, eyes, and respiratory tract, skin sensitization, respiratory sensitization, neurotoxicity, lung effects, systemic effects, reproductive and developmental effects, genetic toxicity, and carcinogenicity for the residuals. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure to the PMN substance;
- No processing for use or use of the PMN substance in a consumer product;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, skin sensitization, and pulmonary effects testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–23–20 (40 CFR 721.12067)

Chemical Name: Silsesquioxanes, 3-mercaptopropyl, polymers with silicic acid (H4SiO4) tetra-Et ester, [(trimethylsilyl)oxy]-terminated.

CASRN: 2796383–42–9.

Effective Date of TSCA Order: November 21, 2023.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as an additive/intermediate. Based on comparison to analogous chemical substances and alkoxysilanes, EPA has identified concerns for lung effects. Based on analogue data for the hydrolysis product, EPA has also identified concerns for skin sensitization and systemic effects. Based on comparison to analogous alkoxysilanes and thiols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may

present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- Use of the PMN substance only for the confidential use listed in the Order;
- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure to the PMN substance;
- Use of personal protective equipment where there is a potential for dermal exposure;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 3 ppb; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, pulmonary effects, skin sensitization, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–23–36 (40 CFR 721.12068).

Chemical Name: Castor oil, polymer with dicyclopentadiene, maleic anhydride, 2-methyl-1,3-propanediol, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl)-1H-isoindole-1,3(2H)-dione and triethylene glycol.

CASRN: 2794200–69–2.

Effective Date of TSCA Order: January 19, 2024.

Basis for TSCA Order: The PMN states that the use will be as a resin used in an electrical insulation coating to insulate electrical components (motors) in automobiles. Based on test data for the expected hydrolysis product and an analogue of the expected hydrolysis product, EPA has identified concerns for skin irritation, eye irritation, systemic effects, and reproductive/developmental effects. Based on comparison to analogous nonionic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 27 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

- No processing for use or use of the PMN substance in a consumer product;
- No manufacture, processing, or use of the PMN substance in any manner that generates a vapor, mist, dust, or aerosol;
- Use of personal protective equipment where there is a potential for dermal exposure;
- No release of the PMN substance, or any waste stream containing the PMN substance, in surface water concentrations that exceed 27 ppb; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of skin irritation, eye irritation, specific target organ toxicity, toxicokinetics, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Numbers (Proposed CFR Citations): P–23–37 (40 CFR 721.12069), P–23–44 (40 CFR 721.12070), P–23–80 (40 CFR 721.12071), and P–23–93 (40 CFR 721.12072)

Chemical Names: Monoaromatic cyclic alkylene sulfonium fluoroalkyl sulfonic acid salt (generic) (P–23–37 and P–23–44), Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic) (P–23–80), and Aromatic dibenzothiophenium fluoroalkyl carbopolycycle sulfonic acid salt (generic) (P–23–93).

CASRNs: Not available.

Effective Date of TSCA Order: December 22, 2023.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) use of the PMN substances will be as photoacid generators (PAGs) for use in electronics industry. Based on the physical/chemical properties of the PMN substances (as described in the New Chemical Program's PBT category at 64 FR 60194; November 1999) and test data on structurally similar substances, the PMN substance are potentially persistent, bioaccumulative, and toxic (PBT) chemicals. EPA estimates that the PMN substances will persist in the environment for more than six months and have unknown bioaccumulation. Based on comparison to analogous chemical compounds, EPA has identified concerns for acute toxicity, irritation to the skin and respiratory tract, neurological effects, and systemic effects for the cation of the PMN substances, as well as eye corrosion for P–23–44, P–23–80, and P–23–93. Based on comparison to analogous chemical substances, EPA has also identified concerns for genetic toxicity for the PMN substances, and skin sensitization and portal-of-entry (respiratory) effects for P–23–93. Based on the photoreactivity of the PMN substances, EPA has also identified concerns for photosensitization. Based on comparison to analogous compounds, EPA has also identified concerns for systemic and reproductive effects for the anion of P–23–44 and P–23–93. Based on data on a potential incineration product, EPA identified concerns for local and systemic effects via inhalation exposure. Based on a lack of scientific data, there is unknown toxicity to aquatic organisms. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No manufacture of the PMN substances beyond the time limits specified in the Order without submittal to EPA the results of certain testing described in the Testing section of the Order;
- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No modification of the processing or use of the PMN substances in any way that generates a vapor, dust, mist, or aerosol in a non-enclosed process;

• Use of the PMN substances only for the confidential uses listed in the Order;
• No domestic manufacture of the PMN substances (*i.e.,* import only);
• Import of the PMN substances only in solution or in sealed containers weighing 5 kilograms or less; and
• No exceedance of the confidential annual importation volumes listed the Order.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substances may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the Order without performing the required Tier I and Tier II testing outlined in the Testing section of the Order.

PMN Number (Proposed CFR Citation): P–23–64 (40 CFR 721.12073)

Chemical Name: Alkanediol, substituted, polymer with diisocyanatoalkane, substituted heterocycle-modified (generic).

CASRN: Not available.

Effective Date of TSCA Order: February 21, 2024.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a component in aerospace coatings. Based on comparison to analogous chemical substances, EPA has identified concerns for pulmonary effects, systemic effects, and skin sensitization. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

• No processing for use or use of the PMN substance in consumer products;
• No manufacture, processing, or use of the PMN substance in any manner that results in the generation of a vapor, mist, dust, or aerosol;
• Use of personal protective equipment where there is a potential for dermal exposure; and
• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–23–72 (40 CFR 721.12074)

Chemical Name: Halosubstituted carbopolycycle, polymer with substituted carbomonocycles and oxybis[alkanol] (generic).

CASRN: Not available.

Effective Date of TSCA Order: February 22, 2024.

Basis for TSCA Order: The PMN states that the use will be as a UV resin for offset lithographic printing on plastic substrates. Based on the physical/chemical properties of the PMN substance (as described in the New Chemical Program's PBT category at 64 FR 60194; November 1999) and test data on structurally similar substances, the PMN substance is a potentially persistent, bioaccumulative, and toxic (PBT) chemical. EPA estimates that the PMN substance will persist in the environment for more than six months and estimates a bioaccumulation factor of greater than or equal to 5,000. Based on test data for hydrolysis products of the low molecular weight fraction of the PMN substance, EPA has identified concerns for genetic toxicity, carcinogenicity, and systemic, reproductive, and developmental effects. Based on comparison to analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 0.4 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Order requires:

• No processing for use or use of the PMN substance in a consumer product;
• No processing for use or use of the PMN substance other than in an enclosed roll-coating lithographic printing machine;
• No processing for use or use of the PMN substance in a final coating formulation that exceeds 40% by weight;
• Disposal of the PMN substance only by landfill;
• No release of the PMN substance, or any waste stream containing the PMN substance, into waters of the United States;
• Use of a NIOSH-certified respirator with an APF of at least 10 where there is a potential for inhalation exposure;
• Use of personal protective equipment where there is a potential for dermal exposure; and
• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of carcinogenicity, developmental toxicity, genetic toxicity, reproductive toxicity, specific target organ toxicity, toxicokinetics, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–23–94 (40 CFR 721.12075)

Chemical Name: Polymer of benzenedicarboxylic acid, substituted-benzenedicarboxylic acid, branched-alkyldiol, alkyldiol and triisocyanate (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 9, 2024.

Basis for TSCA Order: The PMN states that the use will be as a reactive polymer for use in surface pre-treatment. Based on test data for the feedstock residual, EPA has identified concerns for lung effects for the residual. Based on OECD QSAR Toolbox results and the structural alert for diisocyanates, EPA has also identified

concerns for dermal and respiratory sensitization. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health. To protect against these risks, the Order requires:

- No processing for use or use of the PMN substance in a consumer product;
- No manufacture, processing, or use of the PMN substance in any manner that results in inhalation exposure to the PMN substance;
- Use of personal protective equipment where there is a potential for dermal exposure; and
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, pulmonary effects, and skin sensitization testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

PMN Number (Proposed CFR Citation): P–23–172 (40 CFR 721.12076)

Chemical Name: Sulfonium, tricarbocyclic-, alkylcarbomonocyclic-polyfluoro-heteropolycyclic-alkyl sulfonate (1:1), polymer with alkylaryl and carbomonocyclic alkylalkanoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-alkylalkanoate]-initiated (generic).

CASRN: Not available.

Effective Date of TSCA Order: January 29, 2024.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the PMN substance will be for photolithography. Based on the physical/chemical properties of the PMN substance (as described in the New Chemical Program's PBT category at 64 FR 60194; November 1999) and test data on structurally similar substances, the PMN substance is a potentially persistent, bioaccumulative, and toxic (PBT) chemical. EPA estimates that the PMN substance will persist in the environment for more than six months and estimates unknown bioaccumulation. Based on comparison to analogous sulfonium compounds, EPA has identified concerns for acute toxicity, irritation to the skin and respiratory tract, eye corrosion, neurological effects, and systemic effects for the sulfonium cation. Based on comparison to analogous chemical substances, EPA has also identified concerns for genetic toxicity. Based on the photoreactivity of the PMN substance, EPA has also identified concerns for photosensitization. Based on a potential incineration product (trifluroacetate), EPA has also identified concerns for local, neurological, developmental and systemic effects via inhalation exposure. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No manufacture of the PMN substance beyond the time limits specified in the Order without submittal to EPA the results of certain testing described in the Testing section of the Order;
- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No modification of the processing of the PMN substance in any way that generates a vapor, dust, mist, or aerosol in a non-enclosed process;
- Use of the PMN substance only for the confidential use listed in the Order;
- No domestic manufacture of the PMN substance (*i.e.,* import only);
- Import of the PMN substance only in solution or in sealed containers weighing 5 kilograms or less; and
- No exceedance of the confidential annual importation volume listed the Order.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the Order without performing the required Tier I and Tier II testing outlined in the Testing section of the Order.

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 proposes to establish 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 estimates. 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 16 in Federal fiscal year (FY) FY2018, five in FY2019, seven in FY2020, 13 in FY2021, 11 in FY2022, and 15 in FY2023, and only a fraction of these submissions 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 proposed 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 any of these chemical substances for an activity that is designated as a significant new use by this rulemaking. 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 the 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 premanufacture notifications required by these SNURs will allow EPA to assess the intended uses to identify potential disproportionate risks and take appropriate actions before the activities commence.

List of Subjects in 40 CFR part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Kevin DeBell,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.12043 through 721.12076 to Subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.12043 Heptane, 2-methoxy-2-methyl-.
721.12044 Benzenesulfonic acid, alkyl-, compd. with 1,1′-iminobis[2-propanol] (1:1) (generic).
721.12045 Sugars, polymer with alkanetriamine (generic).
721.12046 Isooctadecanamide, N,N-bis(2-ethylhexyl)-.
721.12047 2-Butanone, oxime, reaction products with trimethoxymethylsilane.
721.12048 2,6-Bis(dialkyl)-4-[2-(1-alkyl-4(1H)-pyridinylidene)alkylidene]-2,5-cycloalkyladien-1-one (generic).
721.12049 Fatty acids, soya, reaction products with ammonia-ethanolamine reaction by-products.
721.12050 1,5-Pentanediamine, 2-methyl-, hydrochloride (1:2).
721.12051 1,5-Pentanediamine, 2-methyl-, hydrochloride (1:1).
721.12052 Formic acid, compd. with 2-methyl-1,5- pentanediamine (2:1).
721.12053 Formic acid, compd. with 2-methyl-1,5-pentanediamine (1:1).
721.12054 Alkadiene, homopolymer, hydroxy-terminated, bis[N-[2-[(1-oxo-2-propen-1-yl)oxylethyl]carbamates] (generic).
721.12055 Oxirane, 2-(chloromethyl)-, homopolymer, ether with dialkyl-alkanediol (2:1) (generic).
721.12056 Aryl, polymer with formaldehyde, glycidyl ether, reaction products with amino alkyl-alkane diamine, cyclohexanediamine and alkylene (alkylcyclohexanamine) (generic).
721.12057 Alkene, alkoxy-, polymer with alkoxyalkene (generic).
721.12058 Methanesulfonamide, 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]-, sodium salt (1:1).
721.12059 1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl).
721.12060 Oxirane, 2-methyl-, polymer with oxirane, mono-isoalkyl ethers, phosphates, salt (generic).
721.12061 Poly(oxy-1,2-ethanediyl), .alpha.-(2-aminoethyl)-.omega.-(2-aminoethoxy)- and Poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′,-(iminodi-2,1- ethanediyl)bis[.omega.-(2-aminoethoxy)-.
721.12062 Alkenoic acid, alkyl, carbopolycyclic alkyl ester, polymer with trihalo (trihaloalkyl) alkyl alkyl alkenoate (generic).
721.12063 Polychloroalkene (generic).
721.12064 Alkanoic acid, trialkyl-, diester with carbomonocycle bis(alkyleneoxy)]bis[alkanediol] (generic).
721.12065 Modified Silsesquioxane, alkoxy-terminated (generic).
721.12066 Vegetable oil, polymer with pimelin ketone, oxymethylene and polymethylenepolyphenylene isocyanate (generic).
721.12067 Silsesquioxanes, 3-mercaptopropyl, polymers with silicic acid (H4SiO4) tetra-Et ester, [(trimethylsilyl)oxy]-terminated.
721.12068 Castor oil, polymer with dicyclopentadiene, maleic anhydride, 2-methyl-1,3-propanediol, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl)-1H-isoindole-1,3(2H)-dione and triethylene glycol.
721.12069 Monoaromatic cyclic alkylene sulfonium fluoroalkyl sulfonic acid salt (generic).
721.12070 Monoaromatic cyclic alkylene sulfonium fluoroalkyl sulfonic acid salt (generic).
721.12071 Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic).
721.12072 Aromatic dibenzothiophenium fluoroalkyl carbopolycycle sulfonic acid salt (generic).
721.12073 Alkanediol, substituted, polymer with diisocyanatoalkane, substituted heterocycle-modified (generic).
721.12074 Halosubstituted carbopolycycle, polymer with substituted carbomonocycles and oxybis[alkanol] (generic).
721.12075 Polymer of benzenedicarboxylic acid, substituted-benzenedicarboxylic acid, branched-alkyldiol, alkyldiol and triisocyanate (generic).
721.12076 Sulfonium, tricarbocyclic-, alkylcarbomonocyclic-polyfluoro-heteropolycyclic-alkyl sulfonate (1:1), polymer with alkylaryl and carbomonocyclic alkylalkanoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-alkylalkanoate]-initiated (generic).

* * * * *

§ 721.12043 Heptane, 2-methoxy-2-methyl-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as Heptane, 2-methoxy-2-methyl- (PMN P–18–127; CASRN 76589–16–7) 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), (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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization and 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 unless by import into the United States in a solution of no greater than 5% by weight (*i.e.,* no domestic manufacture). It is a significant new use to process the substance unless in a solution of no greater than 5% by weight of the substance. It is a significant new use to process for use or use the substance in consumer products unless the concentration of the substance is less than 1% by weight.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=210.

(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.

§ 721.12044 Benzenesulfonic acid, alkyl-, compd. with 1,1′-iminobis[2-propanol] (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as benzenesulfonic acid, alkyl-, compd. with 1,1′-iminobis[2-propanol] (1:1) (PMN P–18–325) 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), (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

purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation, eye irritation, and specific target organ toxicity. For purposes § 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). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure to the substance. It is a significant new use to process for use or use the substance other than as an industrial cross-linking catalyst.

(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.

§ 721.12045 Sugars, polymer with alkanetriamine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as sugars, polymer with alkanetriamine (PMN P–20–14) 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 or 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 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: reproductive toxicity and 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=191.

(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.

§ 721.12046 Isooctadecanamide, N,N-bis(2-ethylhexyl)-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as isooctadecanamide, N,N-bis(2-ethylhexyl)- (PMN P–21–86; CASRN 1616494–50–8) 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 entrained in a polymer.

(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), (g)(1), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: 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.* It is a significant new use to process the substance for use in a consumer product where the concentration of the substance in the consumer product formulation exceeds the confidential percentage listed in the Order. It is a significant new use to use the substance in a consumer product where the concentration of the substance exceeds the confidential percentage listed in the Order.

(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.

§ 721.12047 2-Butanone, oxime, reaction products with trimethoxymethylsilane.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 2-butanone, oxime, reaction products with trimethoxymethylsilane (PMN P–21–164; CASRN 2639393–45–4) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (6), 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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, carcinogenicity, serious eye damage, reproductive toxicity, skin irritation, skin sensitization, and 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.* It is a significant new use to load or unload the substance for manufacture, processing, or use in any manner unless under a gas (*e.g.* nitrogen) blanket. It is a significant new use to use the substance unless at 4% or less by weight in formulation. It is a significant new use to apply the substance for use unless by roll, brush, or dip coating.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(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.

§ 721.12048 2,6-Bis(dialkyl)-4-[2-(1-alkyl-4(1H)-pyridinylidene)alkylidene]-2,5-cycloalkyladien-1-one (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 2,6-bis(dialkyl)-4-[2-(1-alkyl-4(1H)-pyridinylidene)alkylidene]-2,5-cycloalkyladien-1-one (generic) (PMN P–21–170) 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), (3) through (6), 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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, eye irritation, skin sensitization, genetic toxicity, carcinogenicity, reproductive toxicity, and 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(k), (t). It is a significant new use to manufacture the substance in excess of an annual volume of 10 kg. It is a significant new use to process for use or use the substance other than as a color indicator for frying oil breakdown. It is a significant new use to manufacture, process, or use the substance in any manner that results in the release of the substance to air except with the use of a HEPA filtration system.

(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.

§ 721.12049 Fatty acids, soya, reaction products with ammonia-ethanolamine reaction by-products.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as fatty acids, soya, reaction products with ammonia-ethanolamine reaction by-products (PMN P–21–184; CASRN 2378512–59–3) 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), (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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin corrosion, skin irritation, serious eye damage, eye irritation, skin sensitization, and 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), and (y)(1) and (2). It is a significant new use to manufacture, process, or use the substance in any manner that results in the generation of vapor, mist, aerosol, or dust.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=2.

(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.

§ 721.12050 1,5-Pentanediamine, 2-methyl-, hydrochloride (1:2).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,5-pentanediamine, 2-methyl-, hydrochloride (1:2) (PMN P–22–3; CASRN 34813–63–3) 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), (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), (g)(1), (3), and (5). For 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 irritation, and eye irritation. 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 to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=570 of P–22–3, P–22–4, P–22–5, and P–22–6 combined.

(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.

§ 721.12051 1,5-Pentanediamine, 2-methyl-, hydrochloride (1:1).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,5-pentanediamine, 2-methyl-, hydrochloride (1:1) (PMN P–22–4; CASRN 1840915–04–9) 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), (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), (g)(1), (3), and (5). For 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 irritation, eye irritation, serious eye damage, skin corrosion, and 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 to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=570 of P–22–3, P–22–4, P–22–5, and P–22–6 combined.

(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.

§ 721.12052 Formic acid, compd. with 2-methyl-1,5- pentanediamine (2:1).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as formic acid, compd. with 2-methyl-1,5- pentanediamine (2:1) (PMN P–22–5; CASRN 1836131–73–7) 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), (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), (g)(1), (3), and (5). For 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 irritation, eye irritation, and 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 to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=570 of P–22–3, P–22–4, P–22–5, and P–22–6 combined.

(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.

§ 721.12053 Formic acid, compd. with 2-methyl-1,5-pentanediamine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as formic acid, compd. with 2-methyl-1,5-pentanediamine (1:1) (PMN P–22–6; CASRN 1836131–75–9) 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), (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), (g)(1), (3), and (5). For 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, and 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 to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=570 of P–22–3, P–22–4, P–22–5, and P–22–6 combined.

(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.

§ 721.12054 Alkadiene, homopolymer, hydroxy-terminated, bis[N-[2-[(1-oxo-2-propen-1- yl)oxylethyl]carbamates] (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkadiene, homopolymer, hydroxy-terminated, bis[N-[2-[(1-oxo-2-propen-1-yl)oxylethyl]carbamates] (PMN P–22–11) 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), (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), (g)(1), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization, respiratory sensitization, reproductive toxicity, and 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(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure to the substance.

(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.

§ 721.12055 Oxirane, 2-(chloromethyl)-, homopolymer, ether with dialkyl-alkanediol (2:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as oxirane, 2-(chloromethyl)-, homopolymer, ether with dialkyl-alkanediol (2:1) (PMN P–22–25) 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), (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), (g)(1), 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: acute toxicity, skin irritation, eye irritation, genetic toxicity, carcinogenicity, and 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(g), (t), (y)(1), and (2). It is a significant new use to manufacture, process, or use the substance in any manner that generates a vapor, mist, aerosol, or dust.

(iv) *Disposal.* It is a significant new use to dispose of the substance, or waste streams containing the substance, other than by hazardous waste incineration.

(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.

§ 721.12056 Aryl, polymer with formaldehyde, glycidyl ether, reaction products with amino alkyl-alkane diamine, cyclohexanediamine and alkylene (alkylcyclohexanamine) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as aryl, polymer with formaldehyde, glycidyl ether, reaction products with amino alkyl-alkane diamine, cyclohexanediamine and alkylene (alkylcyclohexanamine) (PMN P–22–49) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (6), 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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, eye irritation, skin corrosion, serious eye damage, respiratory sensitization, skin sensitization, genetic toxicity, reproductive toxicity, and 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=2.

(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.

§ 721.12057 Alkene, alkoxy-, polymer with alkoxyalkene (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkene, alkoxy-, polymer with alkoxyalkene (PMN P–22–50) 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), (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), (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation, eye irritation, and 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(k) and (o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure to the substance.

(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.

§ 721.12058 Methanesulfonamide, 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]-, sodium salt (1:1).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as Methanesulfonamide, 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl]-, sodium salt (1:1) (PMN P–22–58; CASRN 91742–21–1) 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), (3) through (6), (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. 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), (g)(1), (3), and (5). For 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, serious eye damage, skin irritation, reproductive toxicity, and 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(b), (k), (v)(2), and (y)(1) and (2). It is a significant new use to process the substance in a manner that generates a vapor, mist, aerosol, or dust that results in inhalation to workers.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=100.

(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.

§ 721.12059 1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl)- (PMN P–22–75; CASRN 15458–48–7) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (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), (g)(1), (3), and (5). For 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 irritation, eye irritation, and 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), (k), and (t). It is a significant new use to manufacture the substance in excess of an annual volume of 3,000 kg. It is a significant new use to use the substance other than as a monomer used to produce an unsaturated polyester resin.

(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.

§ 721.12060 Oxirane, 2-methyl-, polymer with oxirane, mono-isoalkyl ethers, phosphates, salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as oxirane, 2-methyl-, polymer with oxirane, mono-isoalkyl ethers, phosphates, salt (PMN P–22–78) 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), (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), (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation and 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(k). It is a significant new use to manufacture or process the substance in a manner that generates a vapor, mist, aerosol, or dust. It is a significant new use to process for use or use the substance other than as a dispersing agent for pesticide formulations.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=23.

(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.

§ 721.12061 Poly(oxy-1,2-ethanediyl), .alpha.-(2-aminoethyl)-.omega.-(2-aminoethoxy)- and Poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′,-(iminodi-2,1-ethanediyl)bis[.omega.-(2-aminoethoxy)-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as poly(oxy-1,2-ethanediyl), .alpha.-(2-aminoethyl)-.omega.-(2-aminoethoxy)- and poly(oxy-1,2-ethanediyl), .alpha.,.alpha.′,-(iminodi-2,1-ethanediyl)bis[.omega.-(2-aminoethoxy)- (PMN P–22–80; CAS Nos. 24991–53–5 and 90350–34–8) 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 or destroyed.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin corrosion, serious eye damage, and 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.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure to the substance.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=0.7.

(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 (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.

§ 721.12062 Alkenoic acid, alkyl, carbopolycyclic alkyl ester, polymer with trihalo (trihaloalkyl) alkyl alkyl alkenoate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkenoic acid, alkyl, carbopolycyclic alkyl ester, polymer with trihalo (trihaloalkyl) alkyl alkyl alkenoate (PMN P–22–82) 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 entrained in dried photoresist.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (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), (g)(1), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: reproductive toxicity and 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(f), (k), (v)(1), (2) and (4), (w)(1), (2) and (4), and (x)(1), (2) and (4). It is a significant new use to manufacture the substance other than by import into the United States (*i.e.,* no domestic manufacture) in a liquid formulation.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(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.

§ 721.12063 Polychloroalkene (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polychloroalkene (PMN P–22–121) 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 completely reacted.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (6), 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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, serious eye damage, skin sensitization, genetic toxicity, carcinogenicity, and 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) and (k). It is a significant new use to process, use, load, or unload the substance unless under a gas (*e.g.,* nitrogen) blanket or in a closed system except that sampling may occur outside the closed system resulting in exposures.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=0.15.

(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.

§ 721.12064 Alkanoic acid, trialkyl-, diester with carbomonocycle bis(alkyleneoxy)]bis[alkanediol] (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkanoic acid, trialkyl-, diester with carbomonocycle bis(alkyleneoxy)]bis[alkanediol] (PMN P–22–145) 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), (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), (g)(1), (3), and (5). For 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, reproductive toxicity, and 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 use the substance in any manner that may generate a spray, mist, vapor, or aerosol containing the substance unless the concentration of the substance is less than 5.7% by weight.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(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.

§ 721.12065 Modified Silsesquioxane, alkoxy-terminated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as modified silsesquioxane, alkoxy-terminated (PMN P–22–175) 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), (3) through (6), (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 10. 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), (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation, eye irritation, and 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 use the substance unless the concentration of the substance does not exceed 10% by weight in formulation.

(iv) *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 (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.

§ 721.12066 Vegetable oil, polymer with pimelin ketone, oxymethylene and polymethylenepolyphenylene isocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as vegetable oil, polymer with pimelin ketone, oxymethylene and polymethylenepolyphenylene isocyanate (PMN P–23–18) 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 or cured.

(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), (g)(1), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, eye irritation, respiratory sensitization, skin sensitization, genetic toxicity, carcinogenicity, reproductive toxicity, and 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(o). It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposure to the substance.

(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.

§ 721.12067 Silsesquioxanes, 3-mercaptopropyl, polymers with silicic acid (H4SiO4) tetra-Et ester, [(trimethylsilyl)oxy]-terminated.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as silsesquioxanes, 3-mercaptopropyl, polymers with silicic acid (H4SiO4) tetra-Et ester, [(trimethylsilyl)oxy]-terminated (PMN P–23–20; CASRN 2796383–42–9) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (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), (g)(1), (3), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization and 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(k). It is a significant new use to manufacture, process, or use the substance in any manner that results inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=3.

(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.

§ 721.12068 Castor oil, polymer with dicyclopentadiene, maleic anhydride, 2-methyl-1,3-propanediol, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl)-1H-isoindole-1,3(2H)-dione and triethylene glycol.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as castor oil, polymer with dicyclopentadiene, maleic anhydride, 2-methyl-1,3-propanediol, 3a,4,7,7a-tetrahydro-2-(2-hydroxyethyl)-1H-isoindole-1,3(2H)-dione and triethylene glycol (PMN P–23–36; CASRN 2794200–69–2) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (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), (g)(1), (3), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: skin irritation, eye irritation, and 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), (y)(1), and (2). It is a significant new use to manufacture or process the substance in a manner that generates a vapor, mist, aerosol, or dust.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=27.

(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.

§ 721.12069 Monoaromatic cyclic alkylene sulfonium fluoroalkyl sulfonic acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as monoaromatic cyclic alkylene sulfonium fluoroalkyl sulfonic acid salt (PMN P–23–37) 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 or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (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), (g)(1), (2)(i) through (iii), (v), (3)(i) and (ii), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, skin sensitization, genetic toxicity, and 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(f), (k), and (t). It is a significant new use to import the substance other than in solution, or in sealed containers weighing 5 kilograms or less. It is a significant new use to modify the processing or use of the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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.

§ 721.12070 Monoaromatic cyclic alkylene sulfonium fluoroalkyl sulfonic acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as monoaromatic cyclic alkylene sulfonium fluoroalkyl sulfonic acid salt (PMN P–23–44) 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 or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (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), (g)(1), (2)(i) through (iii), (v), (3)(i) and (ii), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, serious eye damage, reproductive toxicity, skin sensitization, genetic toxicity, and 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(f), (k), and (t). It is a significant new use to import the substance other than in solution, or in sealed containers weighing 5 kilograms or less. It is a significant new use to modify the processing or use of the substance in any way that generates

dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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.

§ 721.12071 Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt (PMN P–23–80) 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 or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (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), (g)(1), (2)(i) through (iii), (v), (3)(i) and (ii), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, serious eye damage, skin sensitization, genetic toxicity, and 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(f), (k), and (t). It is a significant new use to import the substance other than in solution, or in sealed containers weighing 5 kilograms or less. It is a significant new use to modify the processing or use of the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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.

§ 721.12072 Aromatic dibenzothiophenium fluoroalkyl carbopolycycle sulfonic acid salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as aromatic dibenzothiophenium fluoroalkyl carbopolycycle sulfonic acid salt (PMN P–23–93) 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 or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (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), (g)(1), (2)(i) through (iii), (v), (3)(i) and (ii), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, serious eye damage, reproductive toxicity, skin sensitization, genetic toxicity, and 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(f), (k), and (t). It is a significant new use to import the substance other than in solution, or in sealed containers weighing 5 kilograms or less. It is a significant new use to modify the processing or use of the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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.

§ 721.12073 Alkanediol, substituted, polymer with diisocyanatoalkane, substituted heterocycle-modified (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkanediol, substituted, polymer with diisocyanatoalkane, substituted heterocycle-modified (PMN P–23–64) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (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), (g)(1), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization and 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(o), and (y)(1) and (2). It is a significant new use to manufacture or process the substance in a manner that generates a vapor, mist, aerosol, or dust.

(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.

§ 721.12074 Halosubstituted carbopolycycle, polymer with substituted carbomonocycles and oxybis[alkanol] (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as halosubstituted carbopolycycle, polymer with substituted carbomonocycles and oxybis[alkanol] (PMN P–23–72) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3) through (6), (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 10. 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), (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: genetic toxicity, carcinogenicity, and 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 process for use or use the substance other than in an enclosed roll-coating lithographic printing machine. It is a significant new use to process for use or use the substance to a final formulation for coating application that exceeds 40% by weight.

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2), and (c)(2).

(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.

§ 721.12075 Polymer of benzenedicarboxylic acid, substituted-benzenedicarboxylic acid, branched-alkyldiol, alkyldiol and triisocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polymer of benzenedicarboxylic acid, substituted-benzenedicarboxylic acid, branched-alkyldiol, alkyldiol and triisocyanate (PMN P–23–94) 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 or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (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), (g)(1), and (5). For purposes of § 721.72(g)(1), this substance may cause: skin sensitization, respiratory sensitization, and 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(o). It is a significant new use to manufacture, process, or use the substance in any manner that results inhalation exposure.

(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.

§ 721.12076 Sulfonium, tricarbocyclic-, alkylcarbomonocyclic-polyfluoro-heteropolycyclic-alkyl sulfonate (1:1), polymer with alkylaryl and carbomonocyclic alkylalkanoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-alkylalkanoate]-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as sulfonium, tricarbocyclic-, alkylcarbomonocyclic-polyfluoro-heteropolycyclic-alkyl sulfonate (1:1), polymer with alkylaryl and carbomonocyclic alkylalkanoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-alkylalkanoate]-initiated (PMN P–23–172) 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 or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (2)(i) and (iii), (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), (g)(1), (2)(i) through (iii), (v), (3)(i) and (ii), and (5). For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, serious eye damage, skin sensitization, genetic toxicity, reproductive toxicity, and 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(f), (k), and (t). It is a significant new use to import the substance other than in solution, or in sealed containers weighing 5 kilograms or less. It is a significant new use to modify the processing of the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(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.

[FR Doc. 2024–29275 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2024–0117; FXES1111090FEDR–256–FF09E21000]

RIN 1018–BI15

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Suckley's Cuckoo Bumble Bee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Suckley's cuckoo bumble bee (*Bombus suckleyi*), an invertebrate species from North America, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the Suckley's cuckoo bumble bee. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the species as an endangered species under the Act. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. Due to the current lack of data sufficient to perform required analyses, we conclude that the designation of critical habitat for the species is not determinable at this time.

DATES: We will accept comments received or postmarked on or before February 18, 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. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 31, 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–R7–ES–2024–0117, 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–R7–ES–2024–0117, 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–R7–ES–2024–0117.

FOR FURTHER INFORMATION CONTACT: Mike Daigneault, Acting Field Supervisor, Southern Alaska Fish and Wildlife Field Office, 4700 BLM Road, Anchorage, AK 99507; telephone 907–271–1467. 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–R7–ES–2024–0117 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 Suckley's cuckoo bumble bee meets the Act's definition of an endangered species; therefore, we are proposing to list it as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list Suckley's cuckoo bumble bee as an endangered species under the Act.

The basis for our action. Under the Act, we may determine that a species is an endangered or a 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 Suckley's cuckoo bumble bee meets the Act's definition of an endangered species due to threats

from host species decline, pathogens, pesticides, habitat fragmentation and conversion, and climate change.

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. We have not yet obtained the necessary economic information needed to develop a proposed critical habitat designation for the Suckley's cuckoo bumble bee, although we are in the process of obtaining this information. At this time, we find that designation of critical habitat for the Suckley's cuckoo bumble bee is not determinable. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species; and

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species.

(4) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

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.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES.**

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in DATES. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We were petitioned on April 23, 2020, by the Center for Biological Diversity to list Suckley's cuckoo bumble bee as an endangered species and to designate critical habitat for this species under the Act. On May 11, 2021, we announced in the **Federal Register** (86 FR 25833) that the petition presented substantial information indicating that this species may be warranted for listing; that document also announced the initiation of a status review for the species. On April 22, 2022, the Center for Biological Diversity filed a complaint that the Service failed to meet our statutory deadline to complete a 12-month finding on the petition. On September 27, 2022, the Service agreed to submit a finding to the **Federal Register** by December 10, 2024. This action constitutes our 12-month finding on the

2020 petition to list Suckley's cuckoo bumble bee.

Peer Review

A species status assessment (SSA) team prepared an SSA report for Suckley's cuckoo bumble bee. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing and recovery actions under the Act (*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 Suckley's cuckoo bumble bee SSA report. We sent the SSA report to nine independent peer reviewers and received seven responses. 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 seven 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 generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions. These suggestions included providing more detailed explanations of assumptions and uncertainties, more discussion of model strengths and limitations, and clarifications in terminology and discussions of genetic diversity; they also made other minor editorial suggestions. Otherwise, no substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and peer reviewer comments are addressed in version 1.0 of the SSA report (Service 2024, entire).

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of Suckley's cuckoo bumble bee is presented in the SSA report (version 1.0; Service 2024, pp. 11–28). Suckley's cuckoo bumble bee is an obligate social parasite (it depends on social hosts for survival and raising young) in the subgenus *Psithyrus.* Bumble bees in this subgenus lack a mechanism to carry pollen and are unable to produce worker bees, so they are entirely dependent on social bumble bee hosts to collect pollen to rear their young (Lhomme and Hines 2019, p. 126). Since Suckley's cuckoo bumble bees are entirely dependent on host bumble bee colonies, host colony availability is critical for the species' survival and overall viability. Cuckoo bumble bees are generally observed in low abundance at the margins of a host species' range, and cuckoo bumble bee distributions are less than that of the host species (Antonovics and Edwards 2011, p. 1003).

Cuckoo bumble bee females emerge from hibernation in the spring and usurp the nest of a suitable host colony, where host workers care for their young. Suckley's cuckoo bumble bee is described as a semi-specialist parasite (Lhomme and Hines 2019, p. 129) and is confirmed to usurp nests of western bumble bees (*Bombus occidentalis*) and Nevada bumble bees (*B. nevadensis*), with other potential hosts in subgenus *Bombus* throughout the extent of its range (see Host Species Decline, below).

The species has a broad historical distribution across North America and it has been found in various habitat types including prairies, grasslands, meadows, urban and agricultural areas, and woodlands from 2 to 3,200 meters (6 to 10,500 feet) in elevation (Williams et al. 2014, pp. 164–165; Committee on the Status of Endangered Wildlife in Canada (COSEWIC) 2019, p. 26; Martin et al. 2023, p. 22; Montana Natural Heritage Program 2023, entire; Service 2024, pp. 17–19). The analytical units and occurrences of Suckley's cuckoo bumble bee are shown below in figure 1.

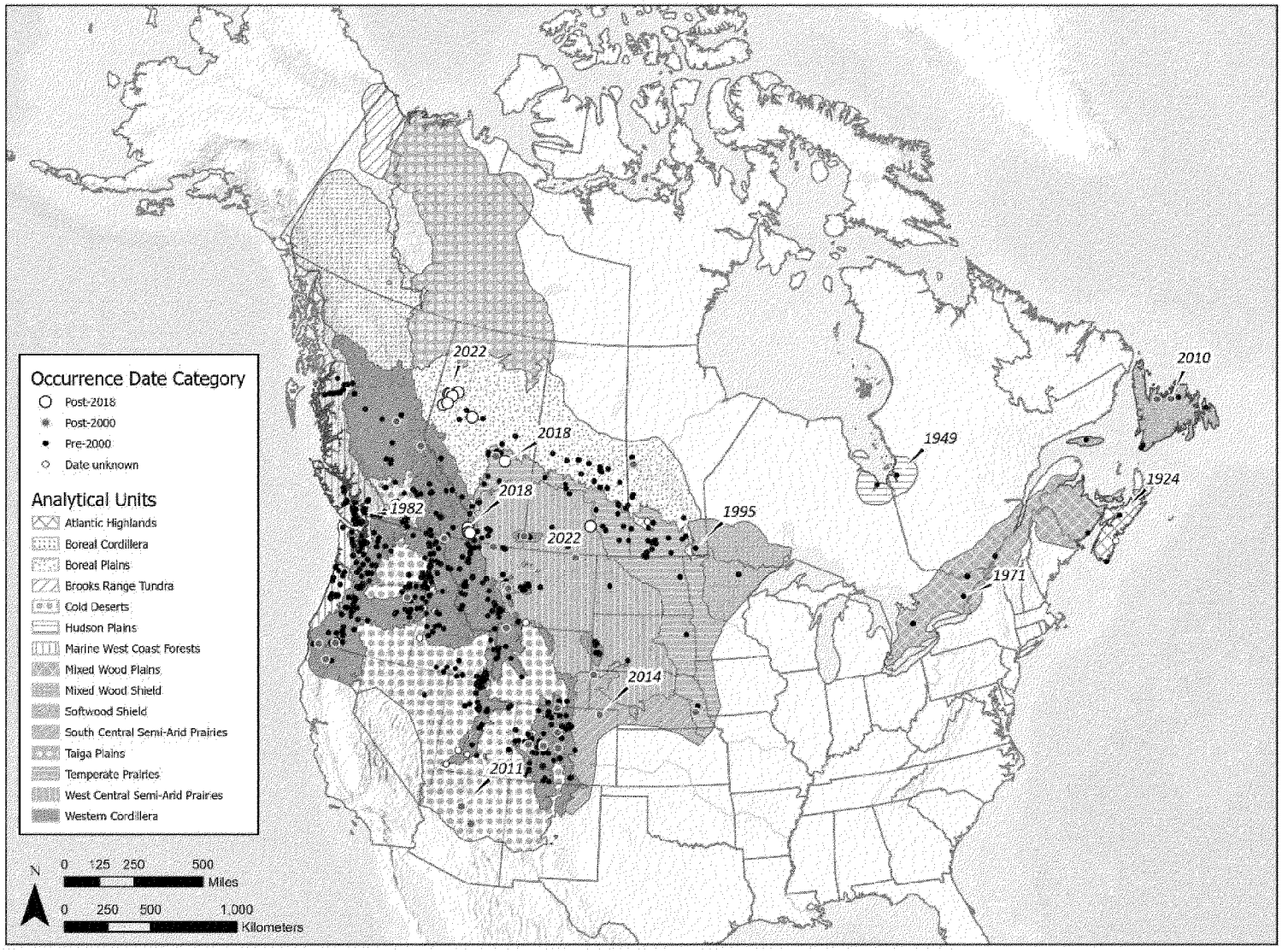


Figure 1. Analytical units and all occurrence records of Suckley's cuckoo bumble bee. The date of the most recent occurrence point per analytical unit is labelled.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M–37021, January 16, 2009; ''M-Opinion,'' available online at *https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf*). The foreseeable future extends as far into the future as the 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 the viability of Suckley's cuckoo bumble bee, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R7–ES–2024–0117 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

There have been few studies focused specifically on understanding Suckley's cuckoo bumble bee biology and needs. Thus, we relied on information available for cuckoo bumble bees (subgenus *Psithyrus*) or bumble bees (genus *Bombus*) where appropriate.

Host Species

Suckley's cuckoo bumble bees cannot successfully reproduce without the availability of suitable host bumble bee colonies. Female cuckoo bumble bees invade host bumble bee nests where they will often eliminate the host queen, destroy host eggs, and eject host larvae from the nest. This may be driven by the need to create space for parasitic eggs and/or to increase the incubation effort of host workers towards parasitic eggs. Cuckoo bumble bees lack a mechanism to carry pollen and are unable to produce worker bees, and thus depend on social bee hosts to collect the pollen on which they rear their young (Lhomme and Hines 2019, p. 126). Thus, survival of Suckley's cuckoo bumble bees is dependent upon the survival and health of the host colony.

Food Resources

Cuckoo bumble bees require diverse native floral resources (pollen and nectar) for nutrition. Limited information exists regarding key forage plants for cuckoo bumble bees (Dozier et al. 2023, p. 643), but abundant spring floral resources are important to cuckoo bumble bee females for ovary development (Lhomme and Hines 2019, p. 132) and abundant fall floral resources are important to the fitness of the colony (Hatfield and LeBuhn 2007, pp. 156–157), since this is when new gynes (the primary reproductive females) and drones (male bees that are solely responsible for reproduction) are produced (Goulson 2010a, pp. 6–8). In addition, fall floral resources are important for females who must survive an overwintering diapause (a period of suspended development) without foraging (Beekman et al. 1998, p. 207; Ogilvie and CaraDonna 2022, p. 2419). Because cuckoo bumble bees are dependent on host workers to raise their offspring, females tend to emerge from hibernation later than their hosts to feed on nectar and pollen in preparation for laying eggs (Lhomme and Hines 2019, p. 132). While specific requirements for overwintering sites are unknown, Suckley's cuckoo bumble bee females likely overwinter in and under mulch or other decomposing vegetation that is separated from nesting habitat (COSEWIC 2019, p. 27; Liczner and Colla 2019, p. 793; Martin et al. 2023, p. 25).

Habitat and Population Connectivity

Dispersal of bees is necessary to find unrelated mates and is aided by the proximity of other usurped colonies and the presence of suitable dispersal corridors. Bumble bee reproductive individuals (drones and gynes) can disperse up to 10.0 kilometer (km) (6.2 mile (mi)) (Darvill et al. 2006, p. 606; Jha and Kremen 2013, p. 2490; Lepais et al. 2010, p. 287). Dispersal distance can vary widely across species, and it has not yet been described for Suckley's cuckoo bumble bees. The indiscriminate cuckoo bumble bee (*B. insularis*) was found to disperse up to 7.0 km (4.3 mi) which is comparable to research on other Bombus species (Koch et al. 2021, p. 5). Connectivity is a constraint for cuckoo bumble bees because they live in small, fragmented populations as a result of their dependence on host bumble bee colonies (Suhonen et al. 2016, p. 529). Population connectivity is important for Suckley's cuckoo bumble bee's viability as it increases the likelihood of genetic diversity, which promotes successful reproduction. Bumble bees are prone to producing unviable sterile males when genetic diversity between mating pairs is low (Zayed 2009, p. 239). Sterile males are unable to contribute to the following year's cohort, which can have negative impacts to the population and overall species viability.

Dispersal of bees to find unrelated mates is aided by the proximity of other usurped colonies. Consequently, the sharp historical decrease in the prevalence of both Suckley's cuckoo bumble bee, and many of its confirmed and potential host species (see *Historical, Current, and Near-term Condition of Suckley's Cuckoo Bumble Bee,* below), has likely reduced population connectivity relative to historical conditions. Reduced gene flow may have consequences on the genetic diversity of Suckley's cuckoo bumble bee, because small populations can experience stronger genetic drift (Zayed 2009, p. 246). This is important because high genetic diversity reduces prevalence of some pathogens (Parsche and Lattorff 2018, p. 900), and the risk of matched mating, which produces sterile males that do not contribute to population growth (Zayed 2009, p. 239).

Thermal Suitability

Bumble bees require temperatures to be within a suitable range throughout their lifecycle; however, this temperature range appears to be highly variable both across and within bumble bee species (Service 2024, pp. 20–22). Based on occupancy modeling results for Suckely's cuckoo bumble bee, occupancy is greatest when the average maximum temperature is near 20 Celsius (°C) (68 Fahrenheit (°F)) and declines when temperatures are lower and higher than the average maximum temperature (Service 2024, p. 64). In general, as bumble bees approach the lower end of their thermal limits, they become lethargic (Oyen et al. 2016, p. 53). Additionally, extreme cold can affect foraging behavior; exposure to cold (approximately 4°C (39°F) for 5 minutes) reduced bumble bee foraging for days after exposure (Wilson et al. 2006, p. 171). The upper end of some bumble bee thermal limits, where loss of muscle control occurs, ranged from approximately 38 to 53°C (100–129°F) (Hamblin et al. 2017, p. supplemental dataset; Oyen et al. 2016, p. 54; Oyen and Dillon 2018, p. 4). Compared to other bee species, bumble bees may be particularly sensitive to increases in temperature (Hamblin et al. 2017, p. 3). Further, bumble bee abundance was observed to decrease following heat waves in Europe (Rasmont and Iserbyt, 2012, p. 276).

Nest temperatures are important to the maintenance and growth of the colony (Heinrich 1979, p. 68; Vogt 1986, p. 64). Temperatures in underground bumble bee nests fluctuate less than in the surrounding environment, maintaining around 30°C (86°F) (Vogt, 1986, p. 61; Goulson, 2010a, p. 20; Heinrich 1979, p. 66), due to insulating qualities and colony behavior. Nest temperatures outside of ideal thermal ranges can slow larvae development and colony growth (Heinrich 1979, p. 68; Vanderplanck et al. 2019, p. 3; Vogt 1986, p. 64). The brood is most susceptible to cold temperatures earlier in the season when ambient temperatures are low, and the colony is small.

In summary, Suckley's cuckoo bumble bee must have availability of suitable host colonies, sufficient food resources, connectivity, and thermal suitability to support viability. Highly resilient populations consist of many genetically diverse individuals that have all their basic resource needs met (host colony availability, floral resource abundance and diversity, overwintering site availability, population connectivity, and thermal suitability). This translates into a diverse collection of individuals on the landscape with high survival and reproduction success, which ultimately results in population

growth and larger populations. Survival and reproduction of Suckley's cuckoo bumble bees depend on the survival and health of the host colony. Host colony workers are paramount to the growth and survival of new generations of Suckley's cuckoo bumble bees because they forage and care for the brood of parasite larva.

Redundancy for Suckley's cuckoo bumble bee is described as having multiple, healthy populations widely distributed across the breadth of adaptive diversity relative to the spatial occurrence of catastrophic events (*e.g.,* pathogen outbreak, wildfire, or drought events). In addition to guarding against a single or series of catastrophic event(s) extirpating all populations of Suckley's cuckoo bumble bee, redundancy is important to protect against losing irreplaceable sources of adaptive diversity. Having multiple populations distributed across the range of the species will help preserve the breadth of adaptive diversity and, hence, the evolutionary flexibility of the species.

The adaptive capacity, as it relates to representation, of Suckley's cuckoo bumble bee is a function of the amount and spatial distribution of genetic and phenotypic diversity. Based on genetic studies of other bumble bee species with similar ecologies, and given the potential dispersal capability, Suckley's cuckoo bumble bee may not exhibit much genetic differentiation across its broad range. Genetic variation can be negatively affected by genetic drift; small populations experience stronger drift (Zayed 2009, p. 246). Thus, preserving the genetic diversity of Suckley's cuckoo bumble bee may require maintaining relatively large populations and connectivity among them.

Threats

Host Species Decline

Cuckoo bumble bees have higher threat indices (higher extinction vulnerability) than host species because they are entirely dependent on host colonies for reproduction (Suhonen et al. 2015, pp. 238–239). The presence of parasitic bees depends on the presence of their hosts; any stressor effects on the host will be reflected in the status of the parasite (Sheffield et al. 2013, p. 508). Because cuckoo bumble bees depend on host species, there is a co-extinction risk for host and parasite species (Suhonen et al. 2015, p. 238). Thus, signs that host species are declining are of major concern to the viability of Suckley's cuckoo bumble bee. The effect of all the stressors impacting Suckley's cuckoo bumble bee are compounded through the additional effects of these stressors on host species availability (Service 2024, p. 33).

Suckley's cuckoo bumble bee is part of a group in the subgenus *Psithyrus* which primarily parasitizes bumble bees in the subgenus *Bombus* (Lhomme and Hines 2019, p. 129). Bumble bee nests are rare to encounter at a baseline, and usurped nests are even rarer to encounter, making observations supporting host choice limited (Lhomme and Hines 2019, pp. 132–133). Additionally, cuckoo bumble bee females may shelter in nests they do not usurp, leading to inconclusive observations.

Given these challenges, our current understanding is that Suckley's cuckoo bumble bee has two confirmed hosts and numerous potential hosts. The western bumble bee is the most widely known host of Suckley's cuckoo bumble bee (Hobbs 1968, p. 164; Williams et al. 2014, p. 165; Lhomme and Hines 2019, p. 128). The western bumble bee occurs throughout the core of Suckley's cuckoo bumble bee's range in western North America. There are also three records of Suckley's cuckoo bumble bee nesting successfully (*i.e.,* rearing young) in Nevada bumble bee nests (Hobbs 1965, p. 127).

Aside from these two confirmed hosts, there are numerous potential hosts (Service 2024, pp. 35–37) including yellow-banded bumble bee (*B. terricola*), red-belted bumble bee (*B. rufocinctus*), yellow bumble bee (*B. fervidus*), and white-shouldered bumble bee (*B. appositus*) (Hobbs 1968, pp. 157, 164; Williams et al. 2014, p. 165). Suckley's cuckoo bumble bees are also observed in locations beyond the range of these confirmed and potential hosts (based on nest observations). Because of this, it is reasonable to assume there are additional hosts not yet confirmed through observations. The following additional potential hosts have been identified for Suckley's cuckoo bumble bee: rusty patched bumble bee (*B. affinis*), McKay's bumble bee (*B. mckayi*), and cryptic bumble bee (*B. cryptarum*) (COSEWIC 2019, p. 17; Service 2024, pp. 5–6).

Over the past century, many species parasitized by Suckley's cuckoo bumble bee have documented declines (Hatfield et al. 2014, p. 46; Hatfield et al. 2015, p. 4; COSEWIC 2019, p. vi). Trends observed across North America suggest subgenus *Bombus* species are experiencing widespread declines (Giles and Ascher 2006, pp. 217–218; Colla and Packer 2008, p. 1387; Schweitzer et al. 2012, p. 7; Janousek et al. 2023, p. 2). For the SSA report, we updated a multi-species occupancy model (Jackson et al. 2022, entire) to evaluate host species declines for two confirmed hosts (western bumble bee and Nevada bumble bee), and four potential hosts in the subgenus *Bombus* (rusty patched bumble bee, McKay's bumble bee, yellow-banded bumble bee, and cryptic bumble bee). The western bumble bee, McKay's bumble bee, rusty patched bumble bee, and yellow-banded bumble bee all exhibited statistically significant temporal declines in occupancy rangewide (Service 2024, pp. 69–70). Since Suckley's cuckoo bumble bee is dependent on host species for survival, declines in host species abundance is having significant impacts to Suckley's cuckoo bumble bee viability.

Managed Bees

Generally, the term ''managed bees'' describes hives or colonies of bees that are used commercially to provide pollination services for a wide variety of crops over the growing season. Some hives or colonies are moved within and between States multiple times throughout a single growing season. Within the range of Suckley's cuckoo bumble bee, managed bees are used for a wide variety of crops including, but not limited to, alfalfa, almonds, apples, avocado, canola, cherries, sunflowers, squash, melon, berries, cucumbers, and clover (Bond et al. 2014, entire). The use of managed bees is expanding in some portions of the range of Suckley's cuckoo bumble bee, including western Canada (COSEWIC 2019, p. 49). Managed bees also include hobby or backyard bee keeping, as well as small-scale greenhouse operations. Managed bees include many different species of bees, such as the introduced European honey bee (*Apis mellifera*) and several species of native North American bumble bees, including common eastern bumble bee (*B. impatiens*), an eastern species that has recently been moved into the range of Suckley's cuckoo bumble bee for commercial pollination services (Palmier and Sheffield 2019, p. 9).

Managed bees are a threat to Suckley's cuckoo bumble bee in two primary contexts—as a pathway for pathogen introduction and spread, and competition for resources (Thomson 2004, p. 467; Winter et al. 2006, entire; Goulson et al. 2008, p. 193; Goulson 2010b, p. 10; Fürst et al. 2014, p. 365; Goulson et al. 2015, p. 11). For example, wild bumble bees located more closely to managed honey bee colonies had significantly higher disease rates than wild bumble bees located farther away (Alger et al. 2019, p. 5). Similarly, infection rates for several bumble bee pathogens were higher in multiple

Bombus species near commercial greenhouses where managed bees were used than in areas located far away from commercial greenhouses (Colla et al. 2006, pp. 462–464).

While individual Suckley's cuckoo bumble bees need floral resources for nectar and pollen, competition for resources likely more directly affects the hosts for Suckley's cuckoo bumble bees, such as western bumble bees, whose colonies may have hundreds of foraging workers. As a result of competition, populations of wild *Bombus* species have been shown to decrease with an increase in honey bee density (Thomson 2016, p. 1251). In particular, western bumble bee colonies that were found near higher densities of managed honey bees had reduced reproductive success (Thomson 2004, p. 464).

Pathogens

Bumble bees are susceptible to a variety of pathogens including fungal pathogens, parasites, tracheal mites, viruses, and nematodes. Many of these pathogens are widespread and cause lethal and sublethal effects for *Bombus* species. We provide a brief summary below of some pathogens that are known to affect Suckley's cuckoo bumble bee, its hosts, or both. Please see the SSA report for a detailed review of all pathogens affecting Suckley's cuckoo bumble bees (Service 2024, pp. 38–34).

The fungal pathogens *Vairimorpha bombi* (formerly *Nosema bombi;* Tokarev et al. 2020, p. 11) and *V. ceranae* (formerly *Nosema ceranae;* Tokarev et al. 2020, p. 11) which are caused by microsporidian parasites, can have lethal and sublethal effects on bumble bees, including disabled wings and impacts to reproduction (Otti and Schmid-Hempel 2007, p. 122), suppressed immune response, and increased mortality (Graystock et al. 2013, pp. 116–117; Graystock et al. 2014, p. 9; Rotheray et al. 2017, p. 294; Service 2018, p. 52). *Vairimopha bombi* has been documented in Suckley's cuckoo bumble bee, one confirmed host species (western bumble bee), and four suspected host species (rusty patched bumble bee, yellow bumble bee, red-belted bumble bee, yellow-banded bumble bee) (Kissinger et al. 2011, p. 222; Cordes et al. 2012, p. 212), and it is classified as an emerging infectious disease (Sachman-Ruiz et al. 2015, p. 2044; Wilfert et al. 2016, pp. 595–596).

Many protozoan parasites have been documented in bumble bees in North America and can negatively affect populations by reducing colony founding success, lowering colony fitness and growth, causing delayed reproduction and inadequate fat reserves in hibernating queens, and causing adult mortality (Shykoff and Schmid-Hempel 1991, p. 242; Schmid-Hempel 2001, pp. 148, 150–154; Brown et al. 2003, pp. 995–1000). In particular, *Apicystis bombi* is a protozoan parasite classified as an emerging infectious disease (Sachman-Ruiz et al. 2015, p. 2044; Wilfert et al. 2016, pp. 595–596). This disease has not been documented in Suckley's cuckoo bumble bee, but it has been documented in Nevada bumble bee, one of two confirmed host species (Maxfield-Taylor et al. 2011, p. 4).

Several honey bee viruses (*e.g.,* deformed wing virus, black queen cell virus, sacbrood virus, Kashmire bee virus, Israeli acute paralysis virus, and acute bee paralysis virus) are also known to infect bumble bees (Singh et al. 2010, p. 8; Robson-Hyska 2017, pp. 124–125; Tehel et al. 2022, p. 4). These viruses have not been documented in Suckley's cuckoo bumble bee, but they have been documented in several of its potential hosts, including red-belted bumble bee, yellow bumble bee, and yellow-banded bumble bee (Robson-Hyska 2017, pp. 63–65, 124–125).

Parasitic nematodes, such as *Sphaerularia bombi,* can result in multiple negative effects to bumble bee queens, including changes in gene expression affecting energy usage, translation, and circadian rhythm (Colgan et al. 2020, p. 170), and in endocrine gland function involved in growth and development in the larva and pupa (Maxfield-Taylor et al. 2011, p. 134). *Sphaerularia bombi* has not been documented in Suckley's cuckoo bumble bee, but it has been documented in western bumble bee (Poinar 1974, p. 305).

In summary, bumble bees are susceptible to a variety of pathogens and parasites, many of which are widespread and cause lethal and sublethal effects for *Bombus* species. Although we lack information on pathogen studies specific to Suckley's cuckoo bumble bee (Dozier et al. 2023, p. 642), we know many of these pathogens and parasites have negative impacts to host species.

Pesticides

A variety of pesticides are widely used in agricultural, urban, and natural environments, including herbicides, insecticides, fungicides, miticides, rodenticides, and adjuvants. The pesticides with greatest effects on bumble bees are herbicides and insecticides (particularly, neonicotinoids, see below for more detail). Herbicide use can cause changes in vegetation and the loss or reduction of flowers needed to provide consistent sources of pollen, nectar, and nesting material (Johansen 1977, p. 188; Kearns et al. 1998, pp. 91–92; Kearns and Inouye 1997, p. 302; Plowright et al. 1978, p. 1145; Smallidge and Leopold 1997, p. 264). Insecticides are specifically designed to directly kill insects, which includes bumble bees, and herbicides reduce available floral resources, thus indirectly affecting bumble bees. For a full review of pesticides and the effects on bumble bees, please see the SSA report (Service 2024, pp. 42–44).

Neonicotinoids are a class of insecticides that are used in a wide variety of agricultural applications, including common use as seed coatings in corn, wheat, soybeans, and cotton (Alford and Krupke, 2017, p. 1) and have been strongly implicated in the decline of several *Bombus* species (Colla and Packer 2008, p. 10; Goulson 2013, pp. 7–8; Pisa et al. 2015, p. 69). Neonicotinoids are currently used throughout the range of Suckley's cuckoo bumble bee in North America. Neonicotinoids kill insects by interfering with the receptors of their nervous systems, causing overstimulation, paralysis, and death (Buszewski et al. 2019, p. 34728). Sublethal effects of neonicotinoids to bumble bees can include impairments to reproduction (Whitehorn et al. 2012, pp. 351–352; Baron et al. 2017, p. 4; Raine 2018, p. 40; Wu-Smart and Spivak 2018, pp. 4–5). Suckley's cuckoo bumble bee have been observed in and around regions of agricultural production, including those involved in the production of crops commonly treated with neonicotinoids.

Habitat Conversion and Fragmentation

The conversion of natural habitat to agricultural and urban areas is the primary cause of bumble bee habitat loss (Goulson et al. 2015, p. 2). Suckley's cuckoo bumble bee is associated with a wide variety of habitats including prairies, grasslands, meadows, and woodlands as well as urban and agricultural areas (COSEWIC 2019, p. 26; Martin et al. 2023, p. 22; Montana Natural Heritage Program 2023, entire). Habitat conversion and fragmentation reduce the amount and/or accessibility of suitable host nests and foraging and overwintering habitat. Habitat conversion and fragmentation also reduce the connectivity required for healthy populations to expand in response to environmental or demographic changes and to maintain genetic diversity. High populations of bumble bee species are associated with diverse floral resources, particularly when surrounded by a complexity of

natural habitats across the landscape (Hines and Hendrix 2005, pp. 1481–1483; Hatfield and LeBuhn 2007, pp. 154–157). Due to their foraging, nesting and overwintering requirements, bumble bees are sensitive to the negative effects of habitat fragmentation (Kearns and Inouye 1997, p. 298).

Habitat loss is commonly cited as a long-term contributor to bee declines through the 20th century, and it may continue to contribute to current declines, at least for some species (Goulson et al. 2008, pp. 191–198; Brown and Paxton 2009, pp. 411–412; Goulson et al. 2015, p. 2). As generalist foragers, Suckley's cuckoo bumble bee and its confirmed host species may not be as severely affected by historical and ongoing habitat loss compared to habitat specialists. However, habitat loss or degradation reduces bee diversity and abundance (Potts et al. 2010, pp. 348–349), and small, isolated patches of habitat may not be sufficient to support healthy bee populations (Öckinger and Smith 2006, pp. 55–56; Hatfield and LeBuhn 2007, pp. 154–156).

Habitat conversion leads to the reduction of abundant and diverse floral resources, which can lead to a lack of sufficient nutritional resources; can reduce colony growth, health, and reproduction; and can negatively influence long-term bee populations (Vaudo et al. 2015, p. 4040). Food shortfalls because of habitat loss can induce longer larval development, can produce smaller and fewer individuals, and can cause an early shift to male production (Beekman and van Stratum 1998, entire; Sutcliffe and Plowright 1990, pp. 1056–1057). Larval and colony growth can be significantly affected by pollen type (plant species), pollen diversity, and the varying nutritional quality and quantity. Nutritional stress caused by habitat loss can affect learning and memory that can lead to reduced foraging efficiency, increased competition, and overall decline in colony fitness (Townsend-Mehler and Dyer 2011, pp. 275–286; Colla 2016, p. 413).

Monoculture farming is another factor that impacts plant community changes and thus reduces nesting opportunities for host colonies (Kearns and Inouye 1997, p. 298). Agricultural manipulation and changes across various landscape types likely impacted the availability of host nest sites in North America in the 20th century due to habitat degradation, modification, conversion, and loss (Goulson 2003, p. 142). These are important changes because diet breadth and coexistence in bumble bees can become limited due to habitat loss (Goulson et al. 2008, pp. 193–200) and coexistence is important for parasitic species such as the Suckley's cuckoo bumble bee that rely on host colonies to raise their young. Decreases in foraging habitat increases competition among bumble bee species, because there is overlap in resources that these species use (Goulson et al. 2008, p. 196).

While habitat conversion and fragmentation are well documented throughout the range of Suckley's cuckoo bumble bee, limited recent observations show Suckley's cuckoo bumble bee, western bumble bee, and rusty patched bumble bee populations do occur in urban and agricultural settings. However, these areas may not represent high-quality habitat with diverse native floral resources, and records of species in these habitats may represent refugia from the primary threats in these areas (*i.e.,* application of pesticides in agricultural settings) (Everett 2023, pers. comm.).

Climate Change

Changes in ambient temperatures and heatwaves—Global annual surface temperatures have risen an average of 0.09 °C (0.17 (°F)) each decade from 1901 to 2020 (U.S. Environmental Protection Agency (EPA) 2021, n.p.). Temperature increases in the contiguous United States since the late 1970s have surpassed the global rates for that period, increasing from 0.17 °C to 0.30 °C (0.31 °F to 0.54 °F) each decade. The northern and western parts of the United States have experienced the greatest temperature increases (EPA 2021, n.p.), representing much of the range of Suckley's cuckoo bumble bee. Suckley's cuckoo bumble bee has been observed at latitudes up to 68.9 degrees North, within the Arctic Circle. Based on the most recent climate models, temperatures in the Arctic have increased at three times the global rate, and are expected to continue to increase at a higher rate than the global average, with surface temperatures exceeding 6 °C (42.9 °F) above preindustrial times by the end of the 21st century (Ma et al. 2022, pp. 1, 7; Hayhoe et al. 2018, pp. 91–92). Climate change is contracting temperate, arctic, and alpine zones (Staten et al. 2018, p. 770) in which bumble bees are distributed and to which they are adapted (Goulson 2010a, p. 2).

In addition to increasing average temperatures, heatwaves in the United States have become more frequent, more intense, and longer in duration (EPA 2021, n.p.). Rising ambient temperatures and heatwaves can negatively affect bumble bee individuals and colonies by reducing survival, increasing energy expenditures, reducing flight and foraging, reducing reproduction, and impacting when bees enter diapause (Bartomeus et al. 2011, p. 20645; Maebe et al. 2021, p. 4229; Service 2024, pp. 20–22).

Bumble bees have low variation in heat stress resistance and, therefore, may have low capacity to adapt physiologically to warming temperatures (Martinet et al. 2021, p. 7). Bumble bee species that occur across a relatively broad climatic range, such as Suckley's cuckoo bumble bee, likely have a greater capacity to adapt to warming temperatures than species with narrow ranges. While we do not know how well Suckley's cuckoo bumble bee will adapt to rising temperatures, their main host species, the western bumble bee, appears to be sensitive to temperature (Janousek et al. 2023, p. 2). Heat waves are projected to increase, particularly in the western portions of North America (Hicke et al. 2022, p. 1937), which represents the bulk of the Suckley's cuckoo bumble bee's range.

Temperature changes could make the southern portions of the Suckley's cuckoo bumble bee's range less suitable for the species, while additional habitat may become more suitable in the northern portions of the range and at higher elevations. Colonizing new areas may be dependent on dispersal ability and may require adapting to novel communities where Suckley's cuckoo bumble bees could be exposed to new environmental conditions (*e.g.,* extreme heat or extreme cold) and potential hosts (Cameron et al. 2011, pp. 39–40; Pradervand et al. 2014, p. 5). Additionally, warming ambient temperatures and heatwaves commonly co-occur with drought, another influence that could compound the effects of any one of the other threats to this species (see *Drought frequency and intensity,* below) (Cameron et al. 2011, pp. 39–40; Pradervand et al. 2014, p. 5).

While northern areas may become suitable in the future, an analysis of long-term observations of 67 bumble bee species from Europe and North America showed southern range contractions as a result of climate change, with no change in northern limits (Kerr et al. 2015, p. 178). Future projections of the distribution of bumble bee species under different climate scenarios and dispersal assumptions also predict widespread declines, and possible extirpations, in the southern portions of species ranges. (Sirois-Delisle and Kerr 2018, pp. 4–5; Soroye et al. 2020, pp. 685, 687).

Warming temperatures could additionally affect Suckley's cuckoo bumble bee and its hosts by affecting floral resources. Shifts in flowering

times (in response to warming temperatures) could result in phenological mismatch between pollinators and their foraging resources (Service 2024, pp. 47–48). Heatwave conditions directly reduce bumble bee foraging, as well as have indirect effects on bumble bee foraging from heat-stressed flowering resources (Williams and Hemberger 2023, p. 597). Decreased pollination due to phenological mismatch could reduce plant reproduction and further affect floral resource availability (Forrest et al. 2010, p. 438; Thomson 2010, p. 3197).

Drought frequency and intensity—Drought negatively impacts floral resources and the pollinators that depend on them. A large portion of Suckley's cuckoo bumble bee's range is within water-limited areas of western North America where drought is frequent and has major implications for floral resources. The frequency of biologically significant drought events is projected to increase within the range of Suckley's cuckoo bumble bee and its host species due to changes in climate and resource impacts (Swain and Hayhoe 2015, pp. 2737–2750).

Drought indirectly impacts bumble bees by altering or reducing floral resources, including reductions to the quality, quantity, and availability of pollen and nectar (Carroll et al. 2001, p. 443; Waser and Price 2016, p. 1405; Phillips et al. 2018, pp. 3226–3235) Shifts in the spatial and temporal patterns of flowering, which result in mid-summer floral gaps (Aldridge et al. 2011, entire), highlight that drought-stress impacts on a plant community could reduce pollen and nectar resources needed for successful pollinator reproduction. Since droughts have a direct effect on floral resources, this in turn has an effect on pollinators at the population level (Roulston and Goodell 2011, p. 305). Drought may also lead to increased competition with honey bees in areas where their resources overlap. When drought conditions impact preferred floral resources, bumble bees will forage on less preferred, drought-resistant species sought after by the more populous honey bees (Thomson 2016, pp. 1247–1255).

A model of cumulative effects of climate changes, landcover, and pesticide use on western bumble bee occupancy found that consecutive years of severe drought was the second most influential cause of occupancy declines (Janousek et al. 2023, pp. 2–3). In addition, suitable habitats may be restricted with rising temperatures, reducing the range of some bumble bee species, especially at range edges where abundance may decline when floral resources decline in response to drought (Thomson 2016, pp. 1247–1255). Although drought may be locally and temporarily alleviated by precipitation, the impacts to the growing season may persist and reduced floral resources could impact Suckley's cuckoo bumble bees that require pollen and nectar to overwinter with adequate body mass (Service 2024, pp. 22–23).

Droughts, especially in consecutive years (Janousek et al. 2023, p. 2), will likely amplify biologically significant negative effects on Suckley's cuckoo bumble bee resources and host species, though the direct drought impacts on Suckley's cuckoo bumble bee individuals and populations are unstudied. Droughts are expected to negatively affect floral resources, alter floral communities to less preferred flowering conditions or timing, increase competition between pollinators, and negatively impact Suckley's cuckoo bumble bee and its hosts throughout much of the species' range.

Wildfire—Wildfires pose complex effects to bumble bees, from decreasing resource availability (Mola and Williams 2018, p. 7; Galbraith et al. 2019, p. 15; Mola et al. 2020, p. 1807) to increasing floral and bee abundance and diversity (Mola and Williams 2018, pp. 4–8; Carbone et al. 2019, entire; Galbraith et al. 2019, entire; Mola et al. 2020, pp. 1804–1808). Fire disturbance can temporarily increase floral resources, thereby enhancing bee body size, reproductive output, genetic diversity, and population size (Carbone et al. 2019, entire; Mola et al. 2020, pp. 1804–1808), although these effects may vary by habitat type (*i.e.,* forested vs. grassland habitats). The relative effect of high-intensity fires varies based on the ecological conditions in which they occur. Since Suckley's cuckoo bumble bee is a broad-ranging species with multiple hosts, fire is likely to have variable and diverse effects throughout its range.

Early spring frosts—Early spring frosts pose a risk to bumble bees, specifically to new queens and newly established colonies, by damaging floral resources (CaraDonna and Bain 2015, pp. 61–62). Flowers, compared to vegetative parts, are generally more sensitive to damage from frost events (CaraDonna and Bain 2015, pp. 61–62), and spring frosts reduce the overall availability of floral resource abundance across the subsequent summer (CaraDonna et al. 2014, p. 4919).

Despite some plants with early phenology exhibiting some tolerance to freezing temperatures (CaraDonna and Bain 2015, pp. 61–63), an advancing bloom date for plants triggered by climate change (CaraDonna et al. 2014, p. 4919) exposes early floral growth to an additional risk of frost damage (Willmer 2012, p. R131). The increased frost damage to flowering plants could also contribute to an observed change in flowering dates across small geographic and altitudinal distributions (Inouye 2008, pp. 357, 361).

Floral resources are important throughout the lifecycles of both Suckley's cuckoo bumble bee and its hosts, but they are particularly important for host colony establishment in early spring. Negative effects of early spring frost on host colony queens, workers, and overall colony size may reduce their ability to persist within season, and to successfully support Suckley's cuckoo bumble bee. Spring frost damage to floral resources has been linked to within-season declines in wild bee populations (Graham et al. 2021, p. 6). Spring frosts could have a negative impact on the success of local bumble bee colonies (Inouye 2008, p. 361) by reducing existing and future within-season availability of pollen and nectar resources on which pollinators, including host colonies for Suckley's cuckoo bumble bee, rely. Inadequate floral resources could especially affect colony establishment and growth if they occur during critical times, such as early spring when new queens emerge from diapause and are establishing their colonies. Delays in emergence or colony initiation after emergence may hinder the ability of bees to complete their life cycle before the end of the relatively short subarctic season (Vogt et al. 1994, p. 1554).

Livestock Grazing

Livestock grazing occurs throughout much of the historical range of Suckley's cuckoo bumble bee, primarily by cattle, sheep and wild horses, and it can have complex effects on bumble bees. In general, grazed sites have reduced floral resources and lower bumble bee diversity and abundance (Hatfield and LeBuhn 2007, p. 150; Sjödin 2007, pp. 2110–2113; Sjödin et al. 2008, p. 763). Although grazing can be a useful management tool for maintaining early successional habitat, benefits are dictated by frequency, intensity, species (*i.e.* sheep, cattle, horses, etc.) and timing (Carvell 2002, p. 44; Kimoto et al. 2012, pp. 9–13). Low-intensity grazing preserves floral resources benefiting bumble bees (Scohier et al. 2012, pp. 287–292), while increased intensity of grazing can reduce bee species richness as a result of altered floral composition, including invasive species establishment and soil

compaction (Hatfield and LeBuhn 2007, p. 156; Vázquez and Simberloff 2003, p. 1080). Bumble bees are sensitive to grazing intensity early in the season, potentially because of altered foraging behavior (Kimoto et al. 2012, pp. 9–13). Intense summer grazing, compared to areas only grazed in winter, reduces vegetation height and floral resources, leading to fewer bee visits to preferred food plants and decreased bumble bee diversity (Xie et al. 2008, pp. 699–700). The reduction of vegetation height and structure from high-intensity grazing in the Pacific Northwest bunchgrass prairies has been linked to declines in bumble bee richness and abundance (Kimoto et al. 2012, pp. 12–13).

Grazing may compact soil and change plant communities (Connors 2016, pers. comm.), thus impacting nesting habitat for Suckley's cuckoo bumble bee hosts (Defenders of Wildlife 2015, p. 14). Livestock may also trample nesting sites (Kearns et al. 1998, p. 90) and negatively impact ground-nesting rodents (Johnson and Horn 2008, p. 444), which in turn may reduce the number of nest sites available for bumble bees (The Xerces Society and Thorp 2010, p. 13). Livestock grazing also impacts hydrology through compaction of soils and degraded riparian areas and may lead to increased fire cycles through the introduction of exotic species (Dwire et al. 1999, pp. 319–321).

In summary, grazing can assist in maintaining open habitat, and low-intensity grazing can preserve floral resources. However, high-intensity grazing can have a negative impact on floral resources and can negatively impact nest site availability. Thus, grazing has varied and complex effects on bumble bees, which makes the impacts difficult to analyze.

Conservation Efforts and Regulatory Mechanisms

Suckley's cuckoo bumble bee is assessed as threatened in Canada (COSEWIC, 2019, p. iii) and is listed as critically endangered by the International Union for Conservation of Nature (Hatfield et al., 2015, p. 1). In the United States, Suckley's cuckoo bumble bee is on the sensitive species list for the U.S. Forest Service and Bureau of Land Management Interagency Special Status/Sensitive Species Program (ISSSSP) in the Pacific Northwest (ISSSSP 2021, entire). It is also listed as a species of greatest conservation need in Idaho, Washington, Colorado, and California, where it is also a candidate for listing under the California Endangered Species Act (Colorado Parks and Wildlife 2015, p. B–1; Washington Department of Fish and Wildlife 2015, pp. 3–39; Idaho Department of Fish and Game 2017, p. xvii; California Natural Diversity Database (CNDDB) 2023, p. 6). These States generally outline research and conservation needs for species of greatest conservation need in State Wildlife Action Plans, but these plans do not offer regulatory protection.

Some States regulate the import of nonnative bee species, which can help protect native bee species, including Suckley's cuckoo bumble bee. The Oregon Department of Agriculture restricts some potential sources of the pathogen *Vairimorpha bombi* from entering the State; only *Bombus* species native to Oregon are permitted for commercial pollination purposes (Oregon Department of Agriculture 2017, p. 5). California requires permits to import some bee species for pollination services (California Department of Food and Agriculture 2023, entire).

The U.S. Forest Service has taken steps to reduce impacts of nonnative bee species. The Pacific Northwest Region of the U.S. Forest Service is working on finalizing apiary guidelines, which include recommendations for management practices and considerations to protect native pollinators and minimize negative effects from managed bees and apiaries on lands managed by the U.S. Forest Service (Everett 2023, pers. comm.). Additionally, at least one U.S. Forest Service National Forest in the Pacific Northwest already restricts commercial and privately owned bees on their managed lands (Everett 2023, pers. comm.). For example, the Colville National Forest plan directs that apiaries should not be placed where they would pose a risk to native pollinators, butterflies, or rare bee species (U.S. Forest Service 2019, p. 67). These measures highlight that the U.S. Forest Service takes the threat of managed bees seriously and is actively working in some regions to protect native bees.

States have also begun implementing strategies to limit pesticide effects on bees. The Oregon Bee Project was initiated in 2017, as a collaboration between the Oregon Department of Agriculture, the Oregon State University Extension Service, and the Oregon Department of Forestry. One project goal is to mitigate bee exposure to pesticides through increased pesticide label comprehension, adoption of new application practices, and increasing coordination between beekeepers and pesticide applicators (Oregon Department of Agriculture et al. 2022, pp. 2–3). Washington State has established similar goals, as stated in their Managed Pollinator Protection Plan, which offers best management practices for beekeepers, growers, and pesticide applicators to help protect pollinators from pesticides (Washington State Department of Agriculture 2018, p. 5). Washington State also adopted additional recommendations and funding for pollinator health (Washington State Bill 5253, effective July 25, 2021).

In Washington, neither the Managed Pollinator Protection Plan nor State Bill 5253 restrict the use of pesticides, but several other States have begun passing regulations on pesticides that are harmful to bees and other pollinators. For example, California recently developed regulations that will implement mitigation measures to protect pollinators by limiting the agricultural uses of certain neonicotinoid pesticides, which went into effect January 1, 2024 (California Department of Pesticide Regulation 2024, entire). Other States that have enacted various regulations on neonicotinoid pesticides to reduce impacts to bees and other pollinators include Colorado, Connecticut, Maine, Minnesota, Massachusetts, Maryland, Nevada, New York, New Jersey, Rhode Island, and Vermont (Malfi 2023, entire).

Other recent efforts aim to better understand bees at risk and implement broader protections. The Pacific Northwest Bumble Bee Atlas (a collaborative effort between the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game, the Oregon Department of Fish and Wildlife, and the Xerces Society for Invertebrate Conservation) seeks to increase understanding of bumble bee distributions and their habitats (Washington Department of Fish and Wildlife et al. 2023, entire). This effort has contributed to the creation of a statewide strategy to protect bumble bee species of conservation concern in Washington, with one of the focal species being Suckley's cuckoo bumble bee (Martin et al. 2023, p. 12). In Alaska, the Alaska Center for Conservation Science at the University of Alaska Anchorage and the Bureau of Land Management have developed the Alaska Bee Atlas. The program aims to collect data on bee biodiversity within Alaska; these data can eventually be used to inform sensitive species lists and management (Fulkerson et al. 2023, p. 18). The number of bumble bee atlases is increasing across the United States and increasingly covering the range of Suckley's cuckoo bumble bee. The expanding coverage of these atlases will

increase understanding of bumble bee status and distribution in North America.

On a broader scale, the Colla Laboratory at York University in Toronto has released a national pollinator strategy for Canada. This national strategy identifies specific goals and actions to protect pollinators and needed research to fill knowledge gaps (Colla and Nalepa 2023, p. 5). The Service is also working on a nationwide plan through a bumble bee conservation benefit agreement, known as The Nationwide Conservation Benefit Agreement for Bumble Bees on Energy and Transportation Lands. This conservation benefit agreement is modeled after the nationwide monarch butterfly candidate conservation agreement with assurances, which is a voluntary agreement with transportation and utility landowners that provides incentives for monarch conservation measures on their lands. The bumble bee conservation benefit agreement will likely include many of the same acres enrolled for the protection of several bumble bee species, including Suckley's cuckoo bumble bee and some of its host species (*i.e.,* western bumble bee, rusty patched bumble bee, and yellow-banded bumble bee). The Nationwide Conservation Benefit Agreement for Bumble Bees on Energy and Transportation Lands is expected to be completed in 2024 (Everett 2023, pers. comm.).

Together, these voluntary and regulatory measures highlight an increase in effort to protect native bumble bee species across North America. Some of these measures specifically target Suckley's cuckoo bumble bee, its host species, or both for conservation. Broad efforts to protect and conserve native pollinators and bees will also likely benefit Suckley's cuckoo bumble bee.

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. 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.

Historical, Current, and Near-Term Condition of Suckley's Cuckoo Bumble Bee

We assessed Suckley's cuckoo bumble bee viability by evaluating the historical and current condition and identifying the primary influences leading to the species' current and near-term condition. We delineated 15 analytical units for Suckley's cuckoo bumble bee: 4 in eastern North America and 11 in western North America (figure 1). Analytical units are based on ecoregions and further detailed in the SSA report (Service 2024, pp. 55–56).

We used a published multi-species occupancy model (Jackson et al. 2022, entire) with updated Suckley's cuckoo bumble bee occurrence records (Service 2024, pp. 56–57) to understand trends in both Suckley's cuckoo bumble bee and host species occupancy. Our dataset included 2,317 occurrence records of Suckley's cuckoo bumble bee. The occupancy model also incorporated floral resources and climate variables. For a detailed review of the methods, please refer to the SSA report (Service 2024, pp. 56–57, 120–123). We provide a summary below of the methods and key findings.

We used the output of the multi-species occupancy model to assess historical trends, and to support our assessment of current and near-term condition. We used decadal projections of rangewide probability of occupancy to visualize and characterize overall, rangewide trends in occupancy from 1900–2020 (Service 2024, pp. 63–64). We used spatially explicit estimates of probability of occupancy from 1900–1960 to characterize the historical probability of occupancy in each analytical unit; we specifically used 1900–1960 to represent the historical baseline, as this is the period before declines were apparent (Service 2024, pp. 63–64). We used spatially explicit occupancy estimates in each analytical unit for the 2000–2020 period to provide a current snapshot or baseline of species condition relative to historical. We used spatially explicit projections of near-term (2020–2040) occupancy in each analytical unit to assess near-term risk of extinction.

The near-term occupancy projections were made under two scenarios. Scenario 1 assumes moderate climate warming under representative concentration pathway (RCP) 4.5. Scenario 2 assumes a high warming scenario (RCP 8.5), and also projects the observed, historical rates of decline due to other, non-climatic (*i.e.,* trend momentum) forward. Both scenarios hold floral resources constant at their 2020 levels, as data are not available to project this variable forward. Thus, under scenario 1, any changes in occupancy are based solely on changes in climate (RCP 4.5), while under scenario 2, any changes in occupancy are based on both climate change (RCP 8.5), as well as historical rates of change due to non-climatic factors. Projections for all host species followed the same procedures.

Suckley's cuckoo bumble bee has exhibited a statistically significant decline, resulting in lower occupancy from historical condition. Historically, the median probability of occupancy of Suckley's cuckoo bumble bee rangewide was 0.65. By the 2000–2020 period all analytical units are estimated to have lower probability of occupancy, with median probability of occupancy less than 0.16 for all analytical units and 0.13 rangewide (table 1).

TABLE 1—MEDIAN ESTIMATED PROBABILITY OF OCCUPANCY FOR SUCKLEY'S CUCKOO BUMBLE BEE IN EACH ANALYTICAL UNIT DURING THE HISTORICAL PERIOD (AVERAGE FROM 1900–1960) AND THE CURRENT (2000–2020) PERIOD

[The percent change in median occupancy from historical to current period is also noted for each analytical unit, as is the total land area of each analytical unit (square kilometers (km^2)) and the percent of the range the unit represents, in terms of land area.]

Analytical unit	Area (km^2)	Percent of range	Last detection	Median historical occupancy	Median current occupancy	Percent change
Atlantic Highlands (East)	44,482	0.6	1924	0.712	0.149	−79
Boreal Cordillera	532,782	7.4	2019	0.706	0.147	−79
Boreal Plains	772,369	10.8	2022	0.661	0.145	−78
Brooks Range Tundra	99,755	1.4	2019	0.705	0.147	−79
Cold Deserts	1,047,895	14.7	2011	0.485	0.061	−87
Hudson Plains (East)	55,863	0.8	1949	0.682	0.133	−80
Marine West Coast Forests	250,206	3.5	1982	0.580	0.095	−84

TABLE 1—MEDIAN ESTIMATED PROBABILITY OF OCCUPANCY FOR SUCKLEY'S CUCKOO BUMBLE BEE IN EACH ANALYTICAL UNIT DURING THE HISTORICAL PERIOD (AVERAGE FROM 1900–1960) AND THE CURRENT (2000–2020) PERIOD—Continued

[The percent change in median occupancy from historical to current period is also noted for each analytical unit, as is the total land area of each analytical unit (square kilometers (km^2)) and the percent of the range the unit represents, in terms of land area.]

Analytical unit	Area (km^2)	Percent of range	Last detection	Median historical occupancy	Median current occupancy	Percent change
Mixed Wood Plains (East)	360,958	5.0	1971	0.640	0.106	−83
Mixed Wood Shield	205,107	2.9	1995	0.590	0.098	−83
Softwood Shield (East)	119,152	1.7	2010	0.685	0.142	−79
South Central Semi-Arid Prairies	208,917	2.9	2014	0.118	0.013	−89
Taiga Plains	905,619	12.7	1969	0.708	0.161	−77
Temperate Prairies	501,088	7.0	2018	0.263	0.028	−89
West Central Semi-Arid Prairies	832,871	11.6	2022	0.577	0.100	−83
Western Cordillera	1,214,900	17.0	2018	0.692	0.140	−80
Rangewide	7,151,965	100	[1] 2022	0.653	0.128	[2] −85

[1] The last detection of Suckley's cuckoo bumble bee in our dataset was 2022. However, field data from across the country from the 2023 field season or beyond had not been fully curated in time to include in the SSA.

[2] Rangewide decline from 1900 to present, based on an analysis of all Suckley's cuckoo bumble bee occurrence records (Service 2024, pp. 63–68).

Suckley's cuckoo bumble bee has not been observed in the United States since 2016, despite widespread historical occurrence records and increased sampling effort for bumble bees. Additionally, the species has only been detected since 2000 (detections after 2000 are considered modern detections) in 9 of the 15 analytical units (60 percent of the total analytical units; see table 1, above). We considered analytical units to be quasi-extirpated (when the density of reproductive individuals in a population becomes so small that extirpation is likely inevitable without intervention) if there were no detections since 2000. In the species' eastern range, three of the four analytical units of Suckley's cuckoo bumble bee were considered quasi-extirpated, including the Atlantic Highlands (last detection in 1924), Hudson Plains (last detection in 1949), Mixed Wood Plains (last detection in 1971).

In the west of the species' range, 3 of the 11 analytical units lack modern detections (*i.e.,* since 2000) of Suckley's cuckoo bumble bee. Notably, the Marine West Coast Forest analytical unit has 515 historical occurrence records (23 percent of total occurrences), but no occurrence records after 1982. The Mixed Wood Shield analytical unit has two historical records of the species, with the most recent occurrence in 1995. Thus, we consider the Marine West Coast Forest and the Mixed Wood Shield analytical units to be quasi-extirpated. Although the species has not been observed in the Taiga Plains since 1962, this area has not been extensively sampled for bees, and, therefore, we did not consider it to be quasi-extirpated.

Additionally, four (western bumble bee, McKay's bumble bee, rusty patched bumble bee, and yellow-banded bumble bee) of six host species exhibited statistically significant temporal declines in occupancy rangewide (Service 2024, pp. 69–70). These results are similar to other studies that found rangewide population declines for bumble bees in the subgenus *Bombus* (Giles and Ascher 2006, pp. 217–218; Colla and Packer 2008, p. 1387; Schweitzer et al. 2012, p. 7; Janousek et al. 2023, p. 2;).

In the near-term (by 2040), probability of occupancy is expected to continue to decline. Under scenario 1, median probability of occupancy is estimated to be less than 0.11 across all analytical units. This represents a 26 to 77 percent decline relative to 2000–2020 estimates. Under scenario 2, median probability of occupancy is estimated to be less than 0.05 across all analytical units. This represents a 73 to 92 percent decline relative to 2000–2020 estimates.

Resiliency

Suckley's cuckoo bumble bee has experienced a statistically significant, rangewide, 85 percent decline in occupancy. Additionally, the species has not been observed in the contiguous United States since 2016, despite widespread historical occurrence records and increased sampling effort for bumble bees. These results suggest that the species is currently found in fewer locations across its range than historically. High abundance and survival are demographic needs of healthy Suckley's cuckoo bumble bee populations. While there are some areas in Canada where the species is still regularly observed, these results suggest resiliency is low across all analytical units. In the near-term, resiliency is projected to continue to decline, further reducing the species ability to sustain populations over time.

Redundancy

Redundancy buffers the species against catastrophic events and can be summarized based on the spatial distribution of sufficiently resilient populations relative to catastrophic events. Currently, three eastern analytical units and two western analytical units are considered quasi-extirpated. This apparent contraction of the range results in a loss of redundancy for the species. In the near-term, the continued decline in occupancy projected will likely further reduce redundancy. Given that one confirmed host species (western bumble bee) and three potential host species (rusty patched bumble bee, McKay's bumble bee, and yellow-banded bumble bee) are in decline, redundancy in terms of host species is considered low. For instance, if a catastrophic event wipes out one host species in an area, then there is less likely to be an alternative host species available for the Suckley's cuckoo bumble bee.

Representation

Due to estimated and observed declines in occupancy, Suckley's cuckoo bumble bee has substantially lower connectivity, and representation than historically. Population connectivity is important for Suckley's cuckoo bumble bee's viability as it increases the likelihood of genetic diversity and promotes successful haplodiploid reproduction (genetic sex-determination system in which females develop from fertilized (diploid) eggs and males from unfertilized (haploid) eggs). Loss of connectivity, genetic drift, and inbreeding may be particularly consequential for bumble bees due to their low effective population size and their haplodiploid sex determination (Goulson et al. 2008, p. 205). However,

population connectivity is naturally a constraint for cuckoo bumble bees because they live in small, fragmented populations due to their dependence on host bumble bee colonies (Suhonen et al. 2016, p. 529). Dispersal of bees to find unrelated mates is aided by the proximity of other usurped host colonies. Consequently, the sharp decrease in the prevalence of both Suckley's cuckoo bumble bee and many of its confirmed and potential host species has likely reduced population connectivity relative to historical conditions. Reduced gene flow may have consequences on the genetic diversity of Suckley's cuckoo bumble bee, because small populations can experience stronger genetic drift (Zayed 2009, p. 246). This is important because high genetic diversity reduces prevalence of some pathogens (Parsche and Lattorff 2018, p. 900), and the risk of matched mating, which produces diploid males that do not contribute to population growth (Zayed 2009, p. 239).

Given the observed 85 percent decrease in the species' occupancy relative to historical conditions, the low current and projected near-term occupancy across all analytical units, and the potential that the species is extirpated or quasi-extirpated in portions of its range, the species has likely lost representation across longitudinal and ecological gradients.

The adaptive capacity of Suckley's cuckoo bumble bee is also dependent on host species, as the distribution of the parasitic bee is restricted by the geographic distribution and population health of host bees, and parasite abundance is low where host abundance is low (Antonovics and Edwards 2011, p. 1003). Therefore, availability of host species may also indirectly restrict the adaptive capacity of Suckley's cuckoo bumble bee, given that four of the six host species are also in decline.

Future Condition

As part of the SSA, the same methods to model near-term condition were also used to mode the two future condition scenarios out to the year 2100. Our scenarios assumed a moderate to major increase in climate change (warming conditions) and either a continuation of factors that resulted in the historical decline of the species, or no continuation of these factors (just the impacts of climate change) to the species. Because we determined that the current and near-term condition of Suckley's cuckoo bumble bee is consistent with the Act's definition of an endangered species (see Determination of Suckley's Cuckoo Bumble Bee's Status, below), we are not presenting the results of the future scenarios beyond 2040 in this proposed rule. Please refer to the SSA report (Service 2024, pp. 73–83) for the full analysis of future conditions.

Determination of Suckley's Cuckoo Bumble Bee's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We presented summary evaluations of the main drivers of the species' current and near-term condition analyzed in the SSA report including habitat conversion and fragmentation (Factor A), livestock grazing (Factor A), pathogens (Factor C), host species decline (Factor E), climate change (Factor E), and pesticides (Factor E). We also evaluated existing regulatory mechanisms (Factor D) and ongoing conservation measures.

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 have determined that Suckley's cuckoo bumble bee has limited resiliency, redundancy, and representation to maintain viability over time. Suckley's cuckoo bumble bee has exhibited a statistically significant decline (85 percent) in probability of occupancy rangewide. Historically, the median probability of occupancy of Suckley's cuckoo bumble bee rangewide was 0.65. By the current time period (2000–2020), all analytical units are estimated to have lower probability of occupancy, with median probability of occupancy less than 0.16 for all analytical units and 0.13 rangewide. In the near-term (by 2040), the probability of occupancy is projected to continue to decline, with probability of occupancy for all analytical units projected to be below 0.05 (scenario 1) and 0.11 (scenario 2). Additional analyses of host species occupancy indicate that four of six known or potential host species exhibited statistically significant temporal declines in probability of occupancy rangewide. Thus, resiliency for all analytical units is considered low.

Suckley's cuckoo bumble bee has lost redundancy because 5 of the 15 analytical units are currently considered to be in a quasi-extirpated state, the species has not been observed in the contiguous United States since 2016, and the remaining analytical units are all considered to have low resiliency. Near-term projections indicate continued declines in occupancy, further reducing redundancy.

Representation has also declined as a result of range contraction and occupancy decline, as phenotypic, genetic, and ecological diversity have declined. As host colonies become less common across the landscape, Suckley's cuckoo bumble bees will likely have lower likelihood of finding unrelated mates. Population fragmentation, genetic drift, and inbreeding are likely to be exacerbated in the near-term as the species becomes even less prevalent. Finally, it is important to note that the viability of Suckley's cuckoo bumble bee is also highly dependent on its host species, many of which have declined historically, and are expected to continue to do so in the near-term.

We do not find Suckley's cuckoo bumble bee meets the Act's definition of a threatened species because the species currently has low resiliency, redundancy, and representation and near-term projections are estimated to further reduce overall species viability. Because Suckley's cuckoo bumble bee has low redundancy and representation, the species is vulnerable to even a single catastrophic event such as a pathogen outbreak, wildfire, or drought event. Thus, after assessing the best scientific and commercial data available, we determine that Suckley's cuckoo bumble bee is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that Suckley's cuckoo bumble bee is in danger of extinction throughout all of its range and

accordingly did not undertake an analysis of any significant portion of its range. Because Suckley's cuckoo bumble bee warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Based on the best scientific and commercial data available, we determine that Suckley's cuckoo bumble bee meets the Act's definition of an endangered species. Therefore, we propose to list Suckley's cuckoo bumble bee as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*) or from our Southern Alaska Fish and Wildlife Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Washington, Oregon, Idaho, California, Colorado, Nevada, Utah, Arizona, Wyoming, Montana, North Dakota, South Dakota, Nebraska, and Minnesota would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Suckley's cuckoo bumble bee. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although Suckley's cuckoo bumble bee 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)(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 Suckley's cuckoo bumble bee that may be subject to conference and consultation procedures under section 7 are management of Federal lands administered by the National Park Service, U.S. Fish and Wildlife Service, 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, or the Federal Emergency Management Agency. Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the Southern Alaska Fish and Wildlife Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and the Service's implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, 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. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

II. Critical Habitat

Background

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 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas

outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(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 compiled in the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best scientific data available at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Critical Habitat Determinability

Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. A careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are in the process of acquiring the complex information needed to perform that assessment. Therefore, due to the current lack of data sufficient to perform required analyses, we conclude that the designation of critical habitat for Suckley's cuckoo bumble bee is not determinable at this time. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

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.

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 sent letters to all Tribes within the range of the species. We received responses back from the Tsleil-Waututh Nation and the Nottawaseppi Huron Band of the Potawatomi; both Tribes provided support for our SSA efforts, but no new data or information. We will continue to work with Tribal entities during the development of any subsequent rules for Suckley's cuckoo bumble bee.

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 Southern Alaska Fish and Wildlife Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species

Assessment Team and the Southern Alaska Fish and Wildlife Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for ''Bee, cuckoo bumble, Suckley's'' 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				
*	*	*	*	*
Bee, cuckoo bumble, Suckley's.	*Bombus suckleyi*	Wherever found	E	[**Federal Register** citation when published as a final rule].
*	*	*	*	*

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–28729 Filed 12–16–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216, 300, and 635

[Docket No. 241010–0269]

RIN 0648–BK86

Seafood Import Procedures and Certification of Admissibility

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: NMFS proposes to revise regulations to provide for electronic entry filing of data from the Certification of Admissibility (COA) form, which allows entry of certain fish or fish products otherwise subject to trade restrictions pursuant to the Marine Mammal Protection Act (MMPA), High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), or Atlantic Tunas Convention Act (ATCA). This proposed rule would standardize and consolidate existing permit, reporting, recordkeeping, and entry filing requirements and allow nations to use their own aggregate catch documentation. The intent of these actions are to enable the continued flow of trade while adhering to existing statutory requirements.

DATES: Written comments must be received on or before February 18, 2025.

ADDRESSES: Written comments on this action, identified by NOAA–NMFS–2022–0057, may be submitted by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0057 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Bryan Keller, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements addressed in the proposed rule may be submitted to the Office of International Affairs, Trade, and Commerce, and/or to NMFS.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service (phone: 301–427–7725; or email: *bryan.keller@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

Several statutes, including the MMPA (16 U.S.C 1361 *et seq.*), Moratorium Protection Act (16 U.S.C. 1826d–k), and ATCA (16 U.S.C. 971 *et seq.*), authorize the U.S. Government to impose trade restrictions on certain fish or fish products (both wild-caught and aquaculture) of a foreign nation, or other entities that have competency to enter into international fishery management agreements as per the Moratorium Protection Act, where the nation has failed to meet the standards or requirements of the United States. In order to allow for entry of similar fish and fish products that are not subject to trade restrictions, NMFS developed the COA fish harvest record form, which is designed to accompany a non-prohibited shipment of fish or fish product to attest to its method and location of harvest. NMFS currently uses paper-format COAs that require

signatures of the certifying official of the exporting nation prior to arrival and the U.S. importer upon release into the United States. This information collection is currently approved by the Office of Management and Budget (OMB) under control number 0648–0651. The COA is currently referenced under separate regulations that implement the MMPA (see 50 CFR 216.24(h)) and the Moratorium Protection Act (see 50 CFR part 300, subpart N).

NMFS now seeks to automate the COA and entry process and proposes to amend and consolidate COA-related permit, reporting and recordkeeping, and entry filing requirements in a new subpart S to 50 CFR part 300. The goal is to ensure consistency in the COA requirements for importing non-restricted products across all programs. This proposed rule would make conforming edits to regulations promulgated pursuant to the MMPA, Moratorium Protection Act, and ATCA, including adding a cross-reference to the new subpart S.

Current COA Use

The COA procedures are used to facilitate and monitor trade in fish products from nations that are subject to narrowly defined trade restrictions (*e.g.,* specific nations, fishing gear or fishing areas) under the MMPA, Moratorium Protection Act, or ATCA, but for which conditions of harvest may allow for entry of certain fish or fish products (see 16 U.S.C. 1371(a)(2)(A); 16 U.S.C. 1826j(d)(2); 16 U.S.C. 1826k(c)(4); and 16 U.S.C. 971d(c)(4) and (5)).

To date, NMFS has allowed use of a COA fish harvest record form to import non-prohibited fish or fish products from nations subject to import prohibitions in two situations under MMPA authority. In the first case, to protect the endangered vaquita porpoise, certain fish products from Mexico that are harvested by specified fishing gear in the Upper Gulf of California that incidentally catch vaquita are subject to trade restrictions (see 85 FR 13626, March 9, 2020). However, those types of fish or fish products are admissible when documented by Mexico via the COA as having been harvested in other fishing areas outside the Upper Gulf of California or with other fishing gear not subject to the import restriction. In the second case, to protect the endangered Maui dolphin, the U.S. Court of International Trade issued a preliminary injunction on the import of certain fish products from New Zealand that were harvested with set net or trawl gear off the west coast of North Island (see Slip OP 22–130 at *https://www.cit.uscourts.gov/sites/cit/files/22-130.pdf*). However, those types of fish or fish products were admissible, when documented by New Zealand via the COA as having been harvested in other fishing areas outside the west coast of North Island or with other fishing gear not subject to the import restriction. As of April 2, 2024, the MMPA import ban was lifted for fish or fish products from New Zealand. Detailed information on the current trade restrictions and provisions for use of the COA to file entries for admissible shipments can be found at: *https://www.fisheries.noaa.gov/foreign/marine-mammal-protection/seafood-import-restrictions.*

NMFS worked closely with U.S. Customs and Border Protection (CBP) to implement the trade restrictions and use of the COA fish harvest record form to document eligible entries. In the two cases referenced above, NMFS worked with CBP trade specialists to determine the U.S. Harmonized Tariff Schedule (HTSUS) codes applicable to the fish or fish products subject to the trade restrictions. NMFS then worked with the CBP Office of Field Operations to implement the trade restriction, with the scope of the restriction specified by the country of origin and the HTSUS code of the product. For the applicable country of origin and HTSUS code combination, the Document Image System (DIS) submission was required in the Automated Commercial Environment (ACE) portal. NMFS communicated the scope of the seafood trade restrictions and the documentation requirements for entry to the trade community through notices in the **Federal Register** (see *https://www.federalregister.gov/documents/2020/03/09/2020-04692/implementation-of-fish-and-fish-product-import-provisions-of-the-marine-mammal-protection*) and/or use of the CBP Cargo Systems Messaging Service (see *https://content.govdelivery.com/accounts/USDHSCBP/bulletins/33ef290*).

Upon the effective date of each trade restriction, CBP port inspectors began monitoring seafood imports from any affected countries to determine if the COA fish harvest record form had been submitted for the selected HTSUS codes. Absent the COA fish harvest record form, the entry was rejected and the entry filer (customs broker or importer of record) notified of the documentation requirement. Pursuant to a data-sharing memorandum of understanding, NMFS receives a daily feed of entry filings from CBP and, for entries requiring the COA, is able to validate the information presented on the COA fish harvest record form.

Proposed Action

Consolidating COA Requirements in New Subpart S

NMFS proposes a new subpart S to 50 CFR part 300 (the International Fisheries Regulations) to provide consistent COA requirements for use across the MMPA, Moratorium Protection Act, and ATCA programs. Under the proposed rule, the importer of record would be required to possess an International Fisheries Trade Permit (IFTP) issued under 50 CFR 300.322. The importer of record must file electronically, at the time of entry, or in advance of entry, the message set required under this subpart with U.S. CBP via the ACE portal. All products subject to subpart S, regardless of value, are subject to the subpart's requirements, notwithstanding any CBP exemptions. NMFS may allow entry of such products if: the exporting nation certifies the products are not subject to U.S. import restrictions via the COA fish harvest record form; the importer of record enters required data via the CBP ACE portal at the time of entry; and the importer of record uploads a copy of the COA fish harvest record form or other approved form through the DIS via the ACE portal within 24 hours of release of the product by CBP.

The COA is defined in this proposed rule as the attestation that the fish or fish products offered for entry into the United States are not subject to any import prohibitions issued pursuant to 50 CFR 216.24(h), 300.206, or 635.40(a) (*i.e.,* the import prohibition provisions under the MMPA, Moratorium Protection Act, and ATCA regulations, respectively). The proposed rule specifies that the COA fish harvest record form is available from NMFS and must be properly completed and certified by a duly authorized official of the exporting nation. The COA must also be validated by the importer of record and submitted to CBP in a format specified by NMFS. Nations subject to import prohibitions may use their own form or aggregate catch documentation, if NMFS finds that the provided information satisfies all requirements of this subpart and is the functional equivalent of NMFS' COA fish harvest record form. The COA fish harvest record form would include the following: information on the fish that was harvested and processed; information on where and when the fish were harvested and/or information on the aquaculture facility producing the product. The proposed rule specifies

that the importer would be required to provide all of the required information as applicable but may provide the total quantity and/or weight of the product(s) as landed/delivered and may omit certain vessel information (*i.e.,* vessel name, vessel authorization, and vessel number) for aggregate reporting. This flexibility may be desirable for aggregate harvests involving multiple small-scale fishing vessels that land fish or fish products at shore. An exporting nation may provide its own report of aggregated catch documentation for the shipment if it contains all the relevant information needed to satisfy this subpart. Finally, the NMFS-issued IFTP number issued for all IFTP holders under 50 CFR 300.322 for the importer of record would be required to be submitted via the ACE portal.

Data Required for Entry Into the ACE Portal

Information entered into the ACE portal must be complete and accurate and must match exactly the information provided on the COA fish harvest record form or other approved documentation. NMFS is working with CBP to automate the process in ACE for applying fish product trade restrictions, including situations when entry is allowed through use of the COA. CBP will develop functionality within the ACE portal to allow NMFS to specify trade restrictions for particular fish or fish products harvested by and/or exported from specific nations. NMFS would also specify when those products may be entered with a COA fish harvest record form documenting that the fish products were harvested by a method or in a location not subject to the specified trade restriction. Specific instructions on submitting the electronic message set are in the ACE Implementation Guide for NMFS incorporated in the Appendices to the Customs and Trade Automated Interface Requirements (CATAIR) appendix PGA (see *https://www.cbp.gov/document/guidance/nmfs-pga-message-set-guidelines*).

To automate the process of entry determination, this proposed rule will set forth the types of data elements that must be entered at the time of entry, or in advance of entry, into the ACE portal by the importer of record for each fish or fish product designated by NMFS as requiring a COA. Automated entry processing would facilitate enforcement of trade restrictions while also reducing the potential for disruptions/delays affecting the trade community when documents are checked manually.

ACE automation of the COA data would allow for the ability to act more quickly in implementing trade restrictions and COA requirements at entry. Under the MMPA, Moratorium Protection Act, and ATCA trade restriction provisions, it is envisioned that the exporting nation subject to a restriction may eventually take the necessary corrective action to address the issue or issues leading to the trade restrictions (*e.g.,* enhanced monitoring of fishing vessels, strengthening enforcement mechanisms, bycatch mitigation, *etc.*). In response to corrective actions, NMFS would lift trade restrictions and an update would be made accordingly in ACE by CBP following guidance and instruction provided by NMFS.

Recordkeeping and Inspections

This proposed rule would add a new requirement, at 50 CFR 300.354, that the importer of record retain records of the information reported at entry under this subpart in electronic or paper format, and make them available for inspection at the importer's place of business or submit them to NMFS upon request, for a period of 2 years from the date of the entry.

Prohibitions

This proposed rule adds a new § 300.355 setting forth prohibitions that it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this subpart, or the conditions of any IFTP issued under this part, and import fish or fish products subject to restrictions and documentation requirements under the MMPA, Moratorium Protection Act, or ATCA without a valid IFTP issued under 50 CFR 300.322 or without submitting complete and accurate information and documentation. These prohibitions are in addition to the prohibitions specified in the MMPA, Moratorium Protection Act, and ATCA regulations at §§ 216.12(d), 300.4, 300.325, and 635.71.

Revisions to the International Trade Documentation and Tracking Programs Regulations of Subpart Q

This proposed rule also amends the international trade documentation and tracking regulations at subpart Q to clarify authorities to which the subpart applies, correct the citation in the definition of International Fisheries Trade Permit and make minor organizational changes to 50 CFR 300.322 and 300.323 to improve readability.

Revisions to the MMPA Import Regulations

Under the MMPA, nations that export fish or fish products to the United States must ensure that their exporting fisheries have regulatory programs to address the incidental and intentional mortality and serious injury of marine mammals during the course of commercial fishing operations that are comparable in effectiveness to those required in U.S. fisheries (see 16 U.S.C. 1371(a)(2) and 50 CFR 216.24(h)). A nation that does not receive a comparability finding from NMFS for a fishery would be subject to trade prohibitions for the fish or fish products from that fishery. However, shipments from that nation may still be allowed if accompanied by a COA fish harvest record form certified by officials of the exporting nation to document that the product was not harvested in a fishery that did not receive a comparability finding. Therefore, NMFS is proposing to revise the MMPA regulations at 50 CFR 216.24(h)(1)(ii)(B) to remove the COA requirements from this provision. This proposed rule would add a reference to 50 CFR part 300, subpart S, for COA-related requirements and procedures for entry of non-prohibited products.

Revisions to the Moratorium Protection Act Regulations

The Moratorium Protection Act contains provisions to negatively certify nations for illegal, unreported or unregulated (IUU) fishing; bycatch of protected living marine resources (PLMR); and unsustainable fishing for sharks (16 U.S.C. 1826j and 1826k and 50 CFR 300.202 through 300.204). Negatively certified nations may be subject to trade restrictions for products harvested in the fisheries of concern. However, the Moratorium Protection Act authorizes alternative procedures that allow entry of fish and fish products on a shipment by shipment or vessel specific basis (16 U.S.C. 1826j(d)(2) and 1826k(c)(4) and 50 CFR 300.207 through 300.209). Current regulations at 50 CFR 300.207 (IUU fishing), 300.208 (PLMR bycatch), and 300.209 (shark catches) set forth the procedures for entry of product from negatively certified nations if the importer submits a COA fish harvest record form validated by the exporting nation to document that the fish or fish products are not subject to trade restrictions. This proposed rule would consolidate the alternative procedures for relevant fish or fish products from negatively certified nations for IUU fishing, PLMR bycatch, or shark catch into 50 CFR 300.207 and remove 300.208 and 300.209 as redundant. This proposed rule would also refer to 50 CFR part 300, subpart S, for COA-

related requirements and procedures for entry of non-prohibited products.

Revisions to ATCA Regulations

ATCA authorizes NMFS to make determinations under 16 U.S.C. 971d(c)(4) and (5) that fish subject to regulation or investigation by the International Commission for the Conservation of Atlantic Tunas (ICCAT) are ineligible for entry into the United States. Paragraph (c)(4) addresses fishing in the ICCAT Convention area in such a manner or in such circumstances as would tend to diminish the effectiveness of ICCAT conservation recommendations. Paragraph (c)(5) addresses repeated and flagrant fishing operations in the Convention area which seriously threaten the achievement of the objectives of the Commission's recommendations. Implementing regulations for these provisions are at 50 CFR 635.40.

The regulations (50 CFR 635.40(a)) provide that NMFS, with the concurrence of the Secretary of State, will publish its findings under 16 U.S.C. 971d(c)(4) or (5) in the **Federal Register**. Upon filing, all shipments of fish in any form of the species found to be ineligible will be denied entry unless a particular shipment is accompanied by a certificate of eligibility (COE), 50 CFR 635.40(b), which provides satisfactory proof that the shipment of fish is eligible for entry. This proposed rule revises 50 CFR 635.40(b) to replace the COE with the COA and refer to 50 CFR part 300, subpart S, for COA-related requirements and procedures for entry of non-prohibited products.

Response to Comments on Advance Notice of Proposed Rulemaking

NMFS published an Advance Notice of Proposed Rulemaking (ANPR) to alert the trade community of the intention to automate entry of the COA in ACE and to seek comment on the data programming needs on the part of the trade (87 FR 44078, July 25, 2022). NMFS received six comments in response to the ANPR from various trade, fishing industry, and environmental non-governmental organizations and has considered them in the development of this proposed rule. Some comments go beyond the scope of this rulemaking, which is solely focused on automated entry filing of COA related to import prohibitions under the MMPA, Moratorium Protection Act, or ATCA. A summary of the relevant comments and responses follows.

Comment 1: Commenters suggested that NMFS should create a separate and independent reporting system similar to the toothfish pre-approval application; then only the approval number will need to be submitted by the importer to ACE.

Response: The toothfish preapproval system is unique in that there is a relatively small number of toothfish shipments that are also covered by the centralized catch documentation system adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). NMFS has determined that because the majority of fish or fish products subject to potential trade prohibitions are not covered by a centralized catch documentation system, as adopted by CCAMLR, the COA is an appropriate process to facilitate entry of non-prohibited fish or fish products that are from a nation subject to an import prohibition under the MMPA, Moratorium Protection Act, or ATCA. Therefore, NMFS is not implementing this suggestion.

Comment 2: Commenters suggested that NMFS should harmonize the information set called for by the COA fish harvest record form and other information collection programs for importing fish or fish products, such as highly migratory species, tuna tracking, seafood import monitoring, and Antarctic resources programs.

Response: Some trade restrictions may be temporary and require specific harvest data to narrowly target the fishing activity of concern, while other trade monitoring programs have information requirements that are agreed multilaterally and are more durable. As the longevity of trade restrictions and scope of information to be collected varies substantially, it is not feasible to harmonize the information set collected by all import programs. Therefore, NMFS is not implementing this suggestion because the proposed solution to harmonize information sets with other trade programs does not align with the temporal or substantive scope of this proposed rule.

Comment 3: Commenters suggested that NMFS should use the Seafood Import Monitoring Program to achieve electronic reporting as needed for COA with minimal disruption to industry/current practices.

Response: NMFS disagrees. Not all seafood products are currently included in the Seafood Import Monitoring Program and trade restrictions may need to be targeted on a range of fish or fish products produced by specific fishing gear/methods/areas. Also, trade restrictions requiring use of the COA may be temporary depending on responsive actions taken by the exporting nation. Similar to Comment 3, NMFS is not implementing this approach because the seafood products covered by the Seafood Import Monitoring Program do not align with all of the potential fish and fish products that could be subject to trade restrictions under this proposed rule.

Comment 4: Commenters suggested that NMFS should include all seafood imports in the COA program and ensure products produced as a result of forced labor are prohibited. NMFS should use the COA to require affirmation of compliance with applicable labor laws and treaties.

Response: NMFS disagrees. Under the MMPA, Moratorium Protection Act, and ATCA, the U.S. Government may deny entry of fish and fish products under certain conditions. The COA provides a means for allowing entry of fish and fish products that were not harvested under those conditions. Therefore, including all seafood imports in the COA program is outside the scope of this regulatory action.

Comment 5: Commenters suggested that NMFS should fully digitize the COA data reporting into ACE (no paper forms).

Response: NMFS disagrees. ACE is designed to receive a prescribed format message set for use by CBP and other partner government agencies. Creating a data entry interface for the COA within ACE would require a major change in functionality and would affect all partner government agency programs. In addition, the use of the paper form is critical to ensure nations certify that the fish or fish products in the subject shipment are not subject to U.S. import restrictions pursuant to the cited authorities. As described in more detail in comment 6 below, NMFS disagrees that this is a practical solution given the number of nations that export fish or fish products into the United States. Requiring a fully digital interface would require some government-to-government interface which is not feasible (see NMFS's response to question 6 below). The paper form is therefore critical for NMFS' validation of trade events as there would otherwise be no certification from the foreign government.

Comment 6: One commenter recommended that NMFS adopt a government-to-government approach to allow electronic transfers of the catch certificate. Another commenter stated that foreign nations that have electronic catch documentation systems in place can certify admissibility through their systems and can provide documents/certificates to NMFS that have less exposure to fraud or misrepresentation.

Response: NMFS disagrees. The U.S. imports seafood from over 130 nations. Developing a system for catch certification that could be supported by all nations would require considerable time and resources and is beyond the scope of this rulemaking. As proposed, the COA fish harvest record form requires validation by the exporting nation. Additionally, this proposed rule specifies that nations subject to import prohibitions may use their own form or aggregate catch documentation if NMFS finds that the provided information satisfies all requirements of this subpart and is the functional equivalent of NMFS' COA fish harvest record form. Thus, under the provisions in this proposed rule, nations with electronic catch certificates could work with NMFS to see if the COA program requirements can be met through use of their electronic catch documentation system.

Comment 7: One commenter suggested that the automated COA should not become a redundant message set layered over the current NOAA message sets used for other trade monitoring programs.

Response: NMFS agrees, but it cannot anticipate all of the situations that may lead to a trade restriction based on the concerns about particular foreign fisheries under various statutory authorities. Likewise, the particular fish or fish products subject to trade restrictions cannot be determined in advance of a determination about the fishery of concern. A situation may arise in which fish or fish products subject to COA are also subject to other NMFS trade monitoring programs. Customs brokers and importers should therefore work with their software developers to avoid repetitive data entry of common elements while generating the individual ACE message sets for each respective NMFS program applicable to the particular shipment.

Comment 8: One commenter recommended carrying out a pilot program with selected importers and brokers for troubleshooting purposes.

Response: NMFS is actively working with CBP to develop the reference files, message set requirements, and business rules in ACE for the COA. Once this work is completed in the ACE certification environment, automation of the COA can be tested against the current COA requirements for Mexico. NMFS will continue work with CBP and the trade community to provide adequate time for testing even after the program is deployed to the ACE production environment. This approach therefore allows for preliminary testing. Preliminary testing could provide insights into any issues or adjustments that need to be made to the program.

Comment 9: Commenters inquired whether product(s) imported into the United States on or after the effective date of a trade restriction but harvested before that date are also subject to the requirement for a COA.

Response: The COA requirements would pertain to U.S. importers upon the effective date of the trade restriction. Importers would then have to report certain data for the product pertaining to the time, place, and circumstances of harvest. Importers that provide a reported harvest date prior to the effective date of the trade restriction on the COA fish harvest record form and through the ACE portal would be allowed to offer their fish or fish product for entry.

Comment 10: Commenters inquired if the foreign nation Harmonized System (HS) Codes be used for products instead of the U.S. Harmonized Tariff Schedule Numbers on the COA form.

Response: U.S. importers must specify 10-digit codes based on the U.S. Harmonized Tariff Schedule (HTSUS), which also comports with the World Customs Organization. NMFS will notify trade restrictions to exporting nations and to CBP by indicating affected HTSUS codes for the products restricted from the specific country of origin. As proposed in this rule, if a U.S. importer files an entry that matches a specified combination of HTSUS code and country of origin, the COA information will be required. If the information provided by the COA fish harvest record form and inputted into the ACE portal shows that the harvest meets admissibility criteria, the entry will be processed and shipment released. If COA data are missing or invalid or indicate the fish products are inadmissible, the entry will be rejected. Foreign exporters should work with U.S. importers to clarify the HTSUS code that is applicable to the fish product offered for entry. That HTSUS code will determine whether the entry will be subject to the COA data requirement. U.S. importers are required to file entries under the applicable HTSUS codes and are subject to penalties should they intentionally misrepresent information about a shipment to avoid CBP or other U.S. Federal Agency information requirements. See additional HTSUS information at: *https://hts.usitc.gov/current.*

Comment 11: Multiple comments addressed that, in some nations, export product may be derived from aggregate fisheries involving several vessels. These nations may make use of a grouping feature for the issuance of simplified catch certificates that will not provide the details for each vessel involved in a certified catch but will keep all the information behind the certificate available in the database. The question was posed whether entering the name of the grouping of vessels rather than each vessel individually would be acceptable to meet the requirements for the COA procedures.

Response: Under the proposed rule, NMFS would consider the use of foreign nation catch certificates provided they meet the requirement to certify admissibility relative to the trade restriction that is imposed. In addition, the proposed rule allows certain vessel information (*i.e.,* vessel name, vessel authorization, and vessel number) to be omitted in aggregate reporting. NMFS seeks further comment on the issue of vessel identifiers and grouping so that trade prohibitions can be effectively enforced while minimizing the burden to the exporting nation and the trade community.

Comment 12: Commenters inquired whether a list of all the duly authorized officials who may certify fish products listed on a COA fish harvest record form meet the specifications on the form would be made publicly available and whether this list includes the duly authorized officials from all exporting nations for which a requirement for COA fish harvest record form is in place.

Response: To date, the COA program has been applied under MMPA authority only to certain Mexican fisheries operating in the Upper Gulf of California with fishing gear that interacts with the endangered vaquita porpoise and to certain New Zealand fisheries operating off the west coast of North Island with fishing gear that interacts with the endangered Maui dolphin. NMFS worked with Mexico to identify officials authorized to certify the harvest information presented on the COA fish harvest record form. To assist Mexican exporters and U.S. importers in identifying and contacting the authorized officials, NMFS published the list. New Zealand sought and received approval from NMFS to use a form generated from that nation's electronic catch certification system. Because the New Zealand catch certificate system is restricted to authorized users, there was no need to publish a list of officials authorized to validate the COA.

For each situation where products of a particular fishery from a nation are subject to an import restriction, NMFS will work with the nation to determine how the COA program may be applied

to avoid disruption to legitimate trade in admissible products. NMFS will consider the benefits to the trade community of posting information about authorizing officials from the nation. NMFS will coordinate with the relevant nation in considering whether to publish a list of authorized officials.

NMFS seeks further comment on the COA provisions from the trade community affected by the current MMPA trade restrictions on certain fish products from Mexico. NMFS also seeks comments from exporters, importers, and customs brokers of fish or fish products who are subject to reporting requirements at entry through the ACE portal. In addition, NMFS seeks comments from software developers who develop programs for trade community computer systems to interface with ACE.

NMFS is interested in any additional comments or suggestions for improving the implementation of the COA provisions pursuant to regulations issued under parts 216 (MMPA), 300 (Moratorium Protection Act), and 635 (ATCA).

Classification

This rulemaking is published under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), the Moratorium Protection Act (16 U.S.C. 1826d-k), and ATCA (16 U.S.C. 971 *et seq.*) The NMFS Assistant Administrator has determined that this proposed rule is consistent with the above referenced statutes and other applicable law, subject to further consideration after public comment.

Under the MMPA, Moratorium Protection Act, and ATCA, certain fish or fish products are to be prohibited from entry into the United States if fishing practices from exporting nations or the nation's actions in regulating certain fisheries result in unsustainable fishing practices (see 16 U.S.C. 1371(a)(2); 16 U.S.C. 1826j(d)(3)(A); 16 U.S.C. 1826k(c)(5); and 16 U.S.C. 971d(c)(4) and (5)). Each of the aforementioned statutes includes provisions authorizing the Secretary of Commerce to implement alternative procedures to ensure non-prohibited products can continue to enter the United States (see 16 U.S.C. 1371(a)(3)(A); 16 U.S.C. 1826j(d)(2); 16 U.S.C. 1826k(c)(4); and 16 U.S.C. 971d(c)(3)(1)(H)). This proposed regulation consolidates the existing alternative procedures for entry regulations in a new subpart S to allow entities seeking to import non-prohibited fish and fish products into the United States to easily locate documentation requirements (*i.e.,* the COA) that must accompany such shipments. This proposed regulation also updates the existing regulations and includes procedures for automating the alternative entry procedures through electronic submission of required data through the ACE portal. Providing for electronic submission of required data accompanying non-prohibited products would allow more rapid entry of these products into the United States. The automated entry filing of the COA via electronic message set through the ACE portal therefore allows NMFS to adhere to our statutory obligations as described in this paragraph while meeting our policy goal of minimizing disruption of lawful trade.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed amendments to the COA include the following amendment of importer permitting, reporting and recordkeeping, and entry filing requirements in situations where the COA fish harvest record form is required; and allowance of the use of forms generated by a foreign nation or aggregate catch documentation, if approved by NMFS.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including seafood wholesalers. According to SBA regulations at 13 CFR 121.201, the small business size standards identified by North American Industry Classification System (NAICS) codes classify a business involved in fish and seafood wholesale trade as a small entity if it has under 100 employees (NAICS code 424460, Fish and Seafood Merchant Wholesalers) for all its affiliated operations worldwide. The rulemaking will also have incidental impacts on trade agents and brokers (NAICS code 425120, Wholesale Trade Agents And Brokers), who may be responsible for some of the data entry burden but we assume this cost will be fully passed on to the wholesaler. As of the 2021 Census Bureau report, there were 1,873 firms categorized by NAICS code 424460 with a combined total annual payroll of $1.2 billion. Revenue information is available from the 2017 Economic Census, at which time the total category revenue was $17.9 billion.

We estimate that 100 firms will be impacted by the rulemaking. According to the 2021 County Business Patterns, 98 percent of businesses categorized by NAICS code 424460 have fewer than 100 employees and therefore qualify as small entities. Therefore, we assume that the rulemaking will apply to 98 small entities.

The economic impact of the rulemaking is the associated labor burden, paperwork maintenance, and permit fee. Specifically, the firms must certify certain information using the COA fish harvest record form, submit data to ACE both before and after release, acquire an International Fisheries Trade Permit, maintain the required records, and respond to any requests for verification. A detailed breakdown of these burdens is included in the Paperwork Reduction Act (PRA) supporting statement and the Regulatory Impact Review, with the total increase in burden from the information collection estimated to be $54,899.77 for the impacted firms. This increase is due to new requirements for submission of an electronic message set to the ACE portal, obtaining an IFTP, and maintaining records for 2 years. The increase was calculated by omitting the elements associated with the previous reporting requirements from the burden summation. Averaged across the 100 impacted firms, the burden is approximately $549 for each firm.

The rulemaking will apply to firms importing certain seafood with the species/country pair that falls under import restrictions. There is no reason to believe this rulemaking will apply disproportionately to small or large firms. If anything, there is likely to be a proportional effect, with larger wholesalers both more likely to import covered products and likely to import more of such products. To estimate the impact of the rulemaking on profitability, we estimate an average revenue from the 2017 Economic Census and adjust it for inflation. Due to the uncertainty regarding the size and income level of impacted firms, we take a conservative approach to estimating the average revenue. There were 410 firms (21.6 percent of the category) with an enterprise size below $500,000 which combined to report $92.7 million in revenue, which equates to $118.2 million after accounting for inflation calculations based on the Bureau of Labor Statistics (BLS) inflation calculator, using December 2017 to May 2024 as the reference dates. This implies an average revenue of $288,292 per firm, of which the $549 burden represents 0.2 percent of the total revenue. This is a conservative estimate of the impact,

having included only the lowest-earning 21.6 percent of firms.

Based on this calculation, we conclude that the regulation will not have a significant economic effect on the impacted small entities, and therefore an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

Section 603(b)(4) of the RFA requires agencies to describe any new reporting, recordkeeping and other compliance requirements. NMFS proposes a revision to a currently approved collection-of-information requirement that is subject to OMB review and approval under the Paperwork Reduction Act (OMB control number 0648–0651). The proposed revisions to the collection-of-information would expand the data elements to be collected from the exporting nation regarding the fishing activity that produced the fish or fish product in the export shipment. Further, the proposed revisions to the collection-of-information would require U.S. entry filers (customs brokers, importer of record) to file a NMFS-specific message set in the ACE portal that provides sufficient information to determine that the fish in the shipment were not harvested under circumstances subject to an import prohibition.

The revised collection-of-information burden, as proposed under this rule, is estimated to be an increase of $54,899.77 across all affected entities. This increase is due to new requirements for submission of an electronic message set to the ACE portal, obtaining an IFTP, and maintaining records for 2 years. The increase was calculated by omitting the elements associated with the previous reporting requirements from the burden summation. Details on the burden associated with these requirements and methodology used to calculate the total burden increase can be found in the Supporting Statement for the Paperwork Reduction Act at: *https://www.regulations.gov/docket/NOAA-NMFS-2022-0057.*

NMFS anticipates that neither U.S. entities nor foreign entities would be significantly affected by this action. Many of the data elements to be submitted electronically through this collection-of-information to gain release of shipments from port are, to some extent, either already collected under the existing fishery monitoring programs, collected pursuant to national or international trade tracking or catch documentation requirements, or collected in support of third-party certification schemes voluntarily adopted by the trade. The COA form is already required for entry of non-prohibited product from nations subject to import restrictions. The minimal increase to burden relates primarily to the submission of an electronic message set to the ACE portal, obtaining an IFTP, and maintaining records for 2 years.

The information collection requirement under this proposed rule intends to minimize any potential overlap with other reporting requirements.

NMFS specifically seeks comments on the burden estimates or any other aspects of the new collection of information. Please send such comments to the Office of International Affairs, Trade, and Commerce at the **ADDRESSES** above, and by submission to Information Collection Review at: *https://www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Exports, Fish, Imports, Indians, Labeling, Marine mammals.

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: December 6, 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 parts 216, 300, and 635 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.,* unless otherwise noted.

■ 2. In § 216.24, revise paragraphs (h)(1)(ii)(B) and (h)(9)(iii)(A) and remove paragraph (h)(9)(iii)(D) to read as follows:

§ 216.24 Taking and related acts in commercial fishing operations including tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(B) Is not accompanied by a Certification of Admissibility (COA) fish harvest record form where such certification is required pursuant to paragraph (h)(9)(iii) of this section.

* * * * *

(9) * * *

(iii) *Certification of Admissibility.* (A) If fish or fish products of a nation are subject to an import prohibition under paragraph (h)(1) or (9) of this section, the Assistant Administrator may allow entry of the same or similar fish and fish products caught or harvested in another fishery of that nation not subject to the prohibition if accompanied by a COA fish harvest record form pursuant to the procedures and requirements specified in 50 CFR part 300, subpart S.

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart N—Identification and Certification of Nations

■ 3. The authority for subpart N continues to read as follows:

Authority: 16 U.S.C. 1826d *et seq.*

■ 4. Revise § 300.207 to read as follows:

§ 300.207 Alternative procedures for products not subject to trade restrictions under this subpart.

(a) As provided under 16 U.S.C. 1826j and 1826k, fish or fish products from a negatively certified nation (§ 300.202, § 300.203, or § 300.204) that are prohibited for entry (§ 300.205) may be allowed entry into the United States on a shipment-by-shipment, shipper-by-shipper, or other basis, if the product was not harvested through the fishing activity for which the nation was negatively certified.

(b) To facilitate entry of products under paragraph (a) of this section, fish or fish products from a negatively certified nation must be accompanied upon entry by a Certification of Admissibility (COA) fish harvest record form pursuant to the procedures and requirements specified in subpart S of this part.

(c) Any trade action recommended and applied under this section shall be consistent with international obligations, including the WTO Agreement.

§§ 300.208 and 300.209 [Removed]

■ 5. Remove §§ 300.208 and 300.209.

Subpart Q—International Trade Documentation and Tracking Programs

■ 6. The authority for subpart Q is added to read as follows:

Authority: 6 U.S.C. 901 *et seq.;* 16 U.S.C. 951–961;16 U.S.C. 971 *et seq.;* 16 U.S.C. 1361–1407; 16 U.S.C. 1385; 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 1826a–c; 16 U.S.C. 1826d–k; 16 U.S.C. 2431 *et seq.; 16* U.S.C. 3371 *et seq.;* 16 U.S.C. 5501 *et seq.;* 22 U.S.C. 1978; 31 U.S.C. 9701 *et seq.*

■ 7. Revise § 300.320 to read as follows:

§ 300.320 Purpose and scope.

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), the Magnuson-Stevens Fishery Conservation and Management Act, the Tuna Conventions Act of 1950, and the Antarctic Marine Living Resources Convention Act of 1984. This subpart implements the applicable recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean, the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the eastern Pacific Ocean, and the Commission for the Conservation of Antarctic Marine Living Resources so far as they affect vessels and persons subject to the jurisdiction of the United States. The regulations under this subpart are also issued under the Marine Mammal Protection Act of 1972, the Dolphin Protection Consumer Information Act, the High Seas Driftnet Fisheries Enforcement Act, the High Seas Driftnet Fishing Moratorium Protection Act, and the Security and Accountability for Every Port Act of 2006. Other relevant authorities include the Pelly Amendment to the Fishermen's Protective Act and the Lacey Act. The requirements in this subpart may be adopted by reference in other regulations under this title.

■ 8. In § 300.321, revise the definition for ''International Fisheries Trade Permit'' to read as follows:

§ 300.321 Definitions.

* * * * *

International Fisheries Trade Permit (or IFTP) means the permit issued by NMFS under § 300.322.

* * * * *

■ 9. In § 300.322, revise paragraph (a) to read as follows:

§ 300.322 International Fisheries Trade Permit.

(a) *General.* Any person who imports (as defined in § 300.321) exports, or re-exports fish or fish products regulated under this subpart from any ocean area, must possess a valid International Fisheries Trade Permit (IFTP) issued under this section. Fish or fish products regulated under this subpart may not be imported into, or exported or re-exported from, the United States unless the IFTP holder files electronically the documentation and the data sets required under this subpart with U.S. Customs and Border Protection (CBP) via ACE at the time of, or in advance of, importation, exportation or re-exportation. If authorized under other applicable laws and regulations, a representative or agent of the IFTP holder may make the electronic filings on behalf of the IFTP holder. Only persons residing in the United States are eligible to apply for the IFTP. A resident agent of a nonresident corporation (see 19 CFR 141.18) may apply for an IFTP.

* * * * *

■ 10. In § 300.323, revise paragraph (a) to read as follows:

§ 300.323 Reporting and recordkeeping requirements.

(a) *Reporting.* Any person who imports, exports, or re-exports fish or fish products regulated under this subpart must file all data sets, reports, and documentation as required under the AMLR program, HMS ITP, TTVP and SIMP, and under other regulations that adopt by reference the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CATAIR) appendix PGA (*https://www.cbp.gov/document/guidance/appendix-pga*). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) appendix Q (*https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats*). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

* * * * *

■ 11. Add subpart S, consisting of §§ 300.350 through 300.355, to read as follows:

Subpart S—Certification of Admissibility

Sec.

300.350 Purpose and scope.
300.351 Definitions.
300.352 International Fisheries Trade Permit requirement.
300.353 Certification of Admissibility procedures.
300.354 Recordkeeping and inspections.
300.355 Prohibitions.

Authority: 16 U.S.C. 971 *et seq.,* 16 U.S.C. 1371 *et seq.,* 16 U.S.C. 1826j and 1826k.

Subpart S—Certification of Admissibility

§ 300.350 Purpose and scope.

The regulations in this subpart are issued under the authority of the Marine Mammal Protection Act (MMPA), the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), and the Atlantic Tunas Convention Act (ATCA). This subpart implements the applicable requirements for Certification of Admissibility (COA) of fish and fish products otherwise subject to import prohibitions under the relevant statutory authority. The requirements in this subpart may be adopted by reference in other regulations under this title.

§ 300.351 Definitions.

Automated Commercial Environment (ACE) means, for purposes of this subpart, the single window portal through which import shipment data required by multiple partner government agencies is filed electronically with the U.S. Customs and Border Protection (CBP) to determine product admissibility.

Certification of Admissibility (COA) means the attestation that the fish or fish products offered for entry into the United States are not subject to any import prohibitions issued pursuant to 50 CFR 216.24(h), 300.205, or 635.40. The COA consists of the fish harvest record form available from NMFS or the comparable form or aggregate catch documentation, issued by the exporting nation for the purposes of documenting admissibility under this subpart if NMFS finds that the provided information satisfies all requirements of this subpart. The COA also includes the submission of electronic data from that form into the ACE portal as required under § 300.353(c).

Fish or fish products means the fish species and products containing those species subject to import prohibitions under 50 CFR part 216, subpart N of this part, and 50 CFR part 635, subpart D,

and to which admissibility documentation and reporting requirements pertain.

Import has the same meaning as in 16 U.S.C. 1802(22). Import includes, but is not limited to, customs entry for consumption, withdrawal from customs bonded warehouse for consumption, or entry for consumption from a foreign trade zone.

International Fisheries Trade Permit (or IFTP) means the permit issued by NMFS under § 300.322.

§ 300.352 International Fisheries Trade Permit requirement.

Any person who imports as defined in § 300.321 fish or fish products for which a COA fish harvest record form is required under 50 CFR 216.24(h), 300.207, or 635.40, must possess a valid International Fisheries Trade Permit (IFTP) issued under § 300.322.

§ 300.353 Certification of Admissibility procedures.

Fish or fish products for which a COA is required under 50 CFR 216.24(h), 300.207, or 635.40 will be denied entry unless the importer of record files electronically, at the time of, or in advance of importation, the data sets and documentation required under this subpart with U.S. Customs and Border Protection (CBP) via the ACE portal. All such products regardless of value are subject to the requirements of this subpart, notwithstanding any CBP exemptions. NMFS may allow entry of such products if the shipments are accompanied by a COA fish harvest record form or other approved documentation (paragraph (a) of this section); the importer of record enters required data (paragraph (c) of this section) via the CBP ACE portal at the time of entry; and the importer of record uploads a copy of the COA or other approved form via the ACE portal within 24 hours of release of the product by CBP (paragraph (d) of this section).

(a) *COA fish harvest record form.* The COA fish harvest record form is available from NMFS and must be properly completed and signed by a duly authorized official of the exporting nation whose fishery is subject to an import prohibition. The COA fish harvest record form must also be validated and signed by the importer of record and submitted to NMFS in a format specified by NMFS. Nations subject to import prohibitions may use their own form or aggregate catch documentation, in lieu of the COA fish harvest record form, if NMFS finds that it satisfies all requirements of this subpart and the COA fish harvest record form.

(b) *COA fish harvest record form information required.* The following data must be included, unless otherwise noted in paragraphs (b)(1) and (2) of this section, in the COA fish harvest record form, or other approved form:

(1) For all fish or fish products: Species of fish (Aquatic Sciences Fishery Information System 3-alpha code as listed at: *https://www.fao.org/*); Product form(s) at the point of first landing whether unprocessed or processed prior to landing/delivery; Quantity and/or weight of the product(s) as landed/delivered (total quantity and/or weight of the product(s) as landed/delivered may be provided for aggregate reporting); Location(s) of first landing, transshipment or delivery; Date(s) of first landing, transshipment or delivery; Name of entity(ies) (processor, dealer, vessel) to which fish was landed or delivered; 10-digit codes based on the U.S. Harmonized Tariff Schedule (HTSUS).

(2) Capture and gear information for wild harvest: Type(s) of fishing gear used to harvest the fish; Area(s) of wild-capture location; Flag state of harvesting vessel(s). Vessel information (may be omitted in aggregate reporting): Name of vessel(s); Evidence of fishing authorization; Unique vessel identifier(s) (if available).

(3) Aquaculture information: Name(s) of farm or aquaculture facility; location of aquaculture facility.

(4) The NMFS-issued IFTP number for the importer of record and the U.S. customs entry number.

(c) *COA data required at the time of entry.* The importer of record must electronically file via the ACE portal the documentation and data from the COA fish harvest record form (or other approved documentation) at the time of, or in advance of, the import of fish or fish products as required under this subpart to determine admissibility. Information entered into the ACE portal must be complete and accurate and must match exactly the information provided on the COA fish harvest record form or other approved documentation. Specific instructions on submitting the required data sets and document images are in the ACE Implementation Guide for NMFS incorporated in the Appendices to the Customs and Trade Automated Interface Requirements (CATAIR) appendix PGA (*https://www.cbp.gov/document/guidance/nmfs-pga-message-set-guidelines*). An ACE entry filing is required for applicable fish or fish products regardless of shipment value.

(d) *Submission of COA fish harvest record form.* Within 24 hours of the release of the product by CBP, the importer of record must submit a copy of the COA fish harvest record form, or other approved documentation, with the U.S. customs entry number noted via the Document Image System for the ACE portal. Prior to submission, the importer of record must validate that the contents of the shipment were accurately described on the COA fish harvest record form and all relevant parties (including the importer of record) have signed the form as per this subpart. Additional data reporting requirements under other U.S. laws or regulations may apply to the particular fish or fish product offered for entry.

§ 300.354 Recordkeeping and inspections.

Import shipments of fish or fish products subject to this subpart may be selected for inspection and/or the information or records supporting entry may be selected for inspection, on a pre- or post-release basis, in order to verify the information submitted at entry. To support such inspections, the importer of record must retain records of the information reported at entry under § 300.353 in electronic or paper-format and make them available for inspection at the importer's place of business or submit them to NMFS upon request, for a period of 2 years from the date of the import.

§ 300.355 Prohibitions.

In addition to the prohibitions specified in 50 CFR 216.12(d), 300.4, 300.325, and 635.71, it is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate any provision of this subpart, or the conditions of any IFTP issued under this part;

(b) Import fish or fish products subject to restrictions and documentation requirements under 50 CFR part 216 or subpart N of this part or 50 CFR part 635, subpart D, without a valid IFTP issued under § 300.322 or without submitting complete and accurate information and documentation that are required under this subpart and applicable to the fish or fish products offered for entry.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 12. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 13. In § 635.40, revise paragraph (b) to read as follows:

§ 635.40 Restrictions to enhance conservation.

* * * * *

(b) *Proof of admissibility.* For the purposes of paragraph (a) of this section and section 971d(6)(a) of ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding filed with the Office of the Federal Register for publication under paragraph (a) of this section is eligible for entry if the shipment is accompanied by Certification of Admissibility (COA) fish harvest record form pursuant to the procedures and requirements specified in 50 CFR part 300, subpart S, certifying that the fish in the shipment:

(1) Are not of the species specified in the finding;

(2) Are of the species named in the finding, but were not taken in the regulatory area; or

(3) Are of the species named in the finding but are products of an American fishery and were lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the finding solely for transshipment.

* * * * *

[FR Doc. 2024–29238 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 241210–0322]

RIN 0648–BN22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan of Puerto Rico; Triggerfish Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Action 3 under the Fishery Management Plan (FMP) for Puerto Rico (Framework Action 3). If implemented, this proposed rule would modify the annual catch limits (ACLs) for the triggerfish stock complex in Federal waters off Puerto Rico. The purpose of this proposed rule and Framework Action 3 is to update management reference points for the triggerfish stock complex under the Puerto Rico FMP consistent with the most recent stock assessment to prevent overfishing and achieve optimum yield (OY).

DATES: Written comments must be received by January 16, 2025.

ADDRESSES: A plain language summary of this proposed rule is available at *https://www.regulations.gov/docket/NOAA-NMFS-2024-0105.* You may submit comments on this document, identified by ''NOAA–NMFS–2024–0105'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and enter ''NOAA–NMFS–2024–0105'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Maria Lopez-Mercer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Framework Action 3, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/framework-action-3-puerto-rico-fishery-management-plan-modification-status-determination.*

FOR FURTHER INFORMATION CONTACT: Maria Lopez-Mercer, NMFS Southeast Regional Office, 727–824–5305, *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: The triggerfish stock complex in the Federal waters off Puerto Rico consists of ocean triggerfish, gray triggerfish and queen triggerfish, and is managed under the Puerto Rico FMP. The Puerto Rico FMP was prepared by the Caribbean Fishery Management Council (Council), approved by the Secretary of Commerce, and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

The Council and NMFS manage fisheries in Federal waters around Puerto Rico under the Puerto Rico FMP. The Puerto Rico FMP was approved by the Secretary of Commerce on September 22, 2020, along with the St. Croix and St. Thomas and St. John FMPs, under section 304(a)(3) of the Magnuson-Stevens Act. NMFS published the final rule in the **Federal Register** to implement the Puerto Rico FMP on September 13, 2022 (87 FR 56204), which, among other measures, included the current ACL values for the triggerfish stock complex in Puerto Rico. The Puerto Rico FMP contains management measures applicable for Federal waters off Puerto Rico, which extend seaward from 9 nautical miles (nmi; 16.7 kilometers) from shore to the offshore boundary of the U.S. Caribbean exclusive economic zone.

The Puerto Rico FMP established status determination criteria (SDC) and other management reference points for triggerfish species under Federal management in Federal waters off Puerto Rico. In the Puerto Rico FMP, the triggerfish stock complex contains queen triggerfish, ocean triggerfish, and gray triggerfish. Queen triggerfish is the indicator stock for the complex because of the limited information (*e.g.,* landings) available for ocean and gray triggerfish. Thus, management measures, SDC, and other reference points are based on landings of queen triggerfish only, but apply to the entire complex.

The Puerto Rico FMP applies a four-tiered acceptable biological catch (ABC) control rule depending on differing levels of data availability. Each tier specifies SDC, such as the maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), and overfishing limit (OFL), or OFL proxy, and other reference points such as the maximum sustainable yield (MSY), or MSY proxy, and ABC. Under

the ABC control rule, tier 1 applies to stocks with the most data available, and each subsequent tier operates with less available data than the preceding tier. Tier 4, the final tier, is the most data limited and applies when no accepted quantitative assessment is available. Tier 4 contains two sub-tiers, tier 4a and tier 4b, which are based on an understanding of the stock's vulnerability to fishing pressure. Tier 4a applies when the stock's vulnerability to fishing pressure is relatively low or moderate, while tier 4b applies to stocks with a high vulnerability to fishing pressure.

In the Puerto Rico FMP, the triggerfish stock complex is considered a tier 4a stock and the MSY proxy, MFMT, and MSST were defined, but as a result of data limitations, were not quantified. Similarly, the OFL for the triggerfish stock complex could not be quantified in the Puerto Rico FMP and a new reference point, the sustainable yield level (SYL), was quantified and used as the OFL proxy. The SYL is a level of landings that can be sustained by a stock over the long-term. For the triggerfish stock complex, the Council's Scientific and Statistical Committee (SSC) derived the ABC from the SYL, and the Council set the ACL for the triggerfish stock complex equal to 95 percent of the recommended ABC. The total ACL was set equal to OY. Under the Puerto Rico FMP, commercial and recreational data were available to establish sector-specific ACLs for the triggerfish stock complex, which were equal to 91.77 percent and 8.23 percent of the total ACL, respectively.

All weights described in this proposed rule are in round weight.

For the triggerfish stock complex, the total ACL is 90,552 pounds (lb; 41,073.6 kilograms [kg]), the commercial ACL is 83,099 lb (37,693 kg), and the recreational ACL is 7,453 lb (3,380.6 kg).

In 2022, the Southeast Data, Assessment, and Review (SEDAR) stock assessment was completed for queen triggerfish in Puerto Rico (SEDAR 80). SEDAR 80 was reviewed by the Council's SSC and determined to be suitable for short-term (*i.e.,* <5 years) management advice. The SSC in consultation with NMFS' Southeast Fisheries Science Center (SEFSC) determined that SEDAR 80 represented the best scientific information available and recommended queen triggerfish (*i.e.,* the triggerfish stock complex) be reclassified from a tier 4a stock to a tier 3 stock (data limited, accepted assessment available) under the Puerto Rico FMP ABC control rule. Under tier 3, if the biomass of the stock goes below MSST, the stock would be determined to be overfished and the Council would then need to develop a rebuilding plan capable of returning the stock to a level that allows the stock to achieve MSY on a continuing basis. Additionally, under tier 3, in years when there is a stock assessment, the stock would be considered to be undergoing overfishing if fishing mortality exceeds the MFMT. This level of fishing mortality, if continued, would reduce the stock biomass to an overfished condition. In years in which there is no assessment, the stock complex would be considered to be undergoing overfishing if landings exceed the OFL.

Under tier 3, the ABC is derived by reducing the OFL by the SSC's scientific uncertainty buffer and reflecting the acceptable probability of overfishing determined by the Council (defined as P*). The SSC coordinated with the SEFSC to provide OFLs and ABCs for the triggerfish stock complex. At the December 2022 Council meeting, the SSC recommended both variable and constant OFLs and ABCs for years 2024 to 2026 for the triggerfish stock complex, with the ABCs across a range of P* values. The Council recommended a P* value of 0.4 and the constant value OFL and ABC, which are equal to the 3-year average OFLs and ABCs from years 2024 to 2026. The total ACL for the triggerfish stock complex is then derived by reducing the ABC by the Council's management uncertainty buffer.

Following the SEDAR 80 stock assessment and recommendations from the Council's SSC, the Council developed Framework Action 3 to update management reference points to prevent overfishing of the triggerfish stock complex and achieve OY, consistent with the requirements of the Magnuson-Stevens Act. In Framework Action 3, the Council decided to recommend a 5 percent management uncertainty buffer and set the total ACL for the stock complex equal to 95 percent of the ABC. The Council specified commercial and recreational ACLs for the triggerfish stock complex using the same sector allocation percentages used under the Puerto Rico FMP (91.77 percent of the total ACL for the commercial sector and 8.23 percent of the total ACL for the recreational sector). Currently, recreational landings in Puerto Rico are not being collected by the NMFS' Marine Recreational Information Program, which was disrupted by Hurricane Maria in 2017, and has not yet resumed operations in Puerto Rico. Therefore, at this time it is not possible to revise the sector allocations for the triggerfish complex.

Management Measures Contained in This Proposed Rule

If implemented, this proposed rule would revise the total, commercial, and recreational ACLs for the triggerfish stock complex in Federal waters around Puerto Rico. The total ACL for the triggerfish stock complex would decrease from 90,552 lb (41,073.6 kg) to 87,220 lb (39,562 kg). The commercial ACL for the complex would decrease from 83,099 lb (37,693 kg) to 80,041 lb (36,306 kg). The recreational ACL for the complex would decrease from 7,453 lb (3,380.6 kg) to 7,178 lb (3,256 kg).

The updated ACLs are expected to better protect against the risk of overfishing of the stock complex in relation to the current ACLs, thus ensuring, to the greatest extent practicable, continued access to the resource in future years.

Measures in Framework Action 3 Not Codified in This Proposed Rule

In addition to the ACL revisions described in this proposed rule and consistent with SEDAR 80, Framework Action 3 revises the MFMT, OFL, and ABC for the triggerfish stock complex under the Puerto Rico FMP. The MFMT, previously not quantified, would be 0.215. The OFL would decrease from the SYL (OFL proxy) of 190,636 lb (86,471 kg) to 118,283 lb (53,652 kg), and the ABC would decrease from 95,318 lb (45,236 kg) to 91,810 lb (41,644 kg). Because estimates of the long-term recruitment for queen triggerfish assessed in SEDAR 80 are unknown, values for the MSY and MSST were not quantified and remain as defined under tier 3 of the ABC control rule. The MSY proxy is equal to 30 percent of the spawning potential ratio, and MSST is equal to 75 percent of the spawning stock biomass produced when fishing at MSY or MSY proxy. The updated management reference points are expected to better protect against the risk of overfishing of the stock complex in relation to the current reference points, thus ensuring, to the greatest extent practicable, continued access to the resource in future years.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework Action 3, the Puerto Rico FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for

purposes of Executive Order 12866. The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows. A copy of the full analysis is available from NMFS (see **ADDRESSES**).

A description of the action, why it is being considered, and the objectives of this proposed rule are contained in the **SUMMARY** section of this proposed rule.

This proposed action directly impacts commercial and recreational fishing for queen triggerfish in Federal waters off Puerto Rico. Recreational fishers (anglers) are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from charter vessels (for-hire), private or leased vessels. Therefore, estimates of the number of anglers directly affected by the proposed action and any impacts on them are neither required nor assessed here.

For-hire fishing businesses sell services to recreational fishers (anglers). The proposed changes to the total ACL and corresponding recreational ACL for queen triggerfish in Puerto Rico would not directly alter the services sold by for-hire fishing businesses. Any change in demand for these fishing services, and associated economic effects, as a result of this action would be a consequence of a change in anglers' behavior, secondary to any direct effect on anglers. Therefore, the impact on for-hire fishing businesses would be an indirect effect of the proposed action.

The proposed action would directly apply to commercial fishing businesses that operate in Federal waters off Puerto Rico. For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing. A business primarily involved in the commercial fishing industry (North American Industrial Classification Code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and its combined annual receipts are no more than $11 million for all of its affiliated operations worldwide. None of Puerto Rico's commercial fishermen had or have annual revenues that reach that figure. As each fisherman is assumed to represent a unique business, NMFS concludes that all commercial fishing businesses in Puerto Rico are small.

At the time Framework Action 3 was prepared, the most recent 5-year commercial landings data considered to be the best available science are from 2015 through 2019. Consequently, estimates of the number of small commercial fishing businesses directly affected by the action and any impacts on them are based on landings from 2015 through 2019. From 2015 through 2019, an annual average of 80 (10.2 percent) of Puerto Rico's 785 small commercial fishing businesses harvested queen triggerfish from Federal and unknown waters. For this proposed rule, ''unknown waters'' represent an area around Puerto Rico for which the jurisdiction, Federal or territorial, was not reported on the commercial catch report form.

Queen triggerfish is part of the triggerfish stock complex, and the proposed action would reduce the total ACL for the triggerfish stock complex in Puerto Rico from 90,552 lb (41,073.6 kg), to 87,220 lb (39,562 kg). This rule would correspondingly reduce the commercial ACL for the triggerfish stock complex from 83,099 lb (37,693 kg), to 80,041 lb (36,306 kg). From 2015 through 2019, annual commercial landings of queen triggerfish ranged from 40,437 lb (18,342 kg) to 71,407 lb (32,390 kg). From those landings, there is no future expectation that any single year or average of multiple years of commercial landings of queen triggerfish would reach or exceed the current commercial ACL (83,009 lb, (37,693 kg)) or proposed commercial ACL (80,041 lb, (36,306 kg)). Moreover, although preliminary, the most recent monitoring of total triggerfish landings indicates those landings are substantially below the current and proposed total ACL. As such, the proposed action would not affect small businesses' commercial landings of triggerfish in Puerto Rico. Therefore, the proposed rule would have no significant impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 622

Caribbean, Fisheries, Fishing, Reef fish, Triggerfish.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: December 11, 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 622 as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.440, amend paragraphs (a)(1) through (3) by revising the table headings and the entries for Triggerfishes for Table 1 to § 622.440(a)(1), Table 2 to § 622.440(a)(2), and Table 3 to § 622.440(a)(3). The revisions read as follows:

§ 622.440 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Family	Stock or stock complex and species composition	Commercial ACL
* *	* * *	* *
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish [1]	80,041 lb (36,306 kg).
* *	* * *	* *

* * * * * (2) * * *

TABLE 2 TO PARAGRAPH (a)(2)

Family	Stock or stock complex and species composition	Recreational ACL
* *	* * *	* *
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish [1]	7,178 lb (3,256 kg).
* *	* * *	* *

* * * * * (3) * * *

TABLE 3 TO PARAGRAPH (a)(3)

Family	Stock or stock complex and species composition	Total ACL
* *	* * *	* *
Triggerfishes	Triggerfish—gray triggerfish, ocean triggerfish, queen triggerfish [1]	87,220 lb (39,562 kg).
* *	* * *	* *

* * * * *

[FR Doc. 2024–29569 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 89, No. 242
Tuesday, December 17, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–113]

Certain Collated Steel Staples From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to Tianjin Hweschun Fasteners Manufacturing Co., Ltd. (Tianjin Hweschun) a producer and exporter of certain collated steel staples (collated staples) from the People's Republic of China (China) during the period of review (POR) from January 1, 2022, through December 31, 2022.

DATES: Applicable December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Brandon James or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7472 or (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2024, Commerce published the *Preliminary Results.*[1] For a complete description of the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[3] Additionally, on December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.[4] Accordingly, the deadline for these final results is now March 10, 2025.

Scope of the Order[5]

The merchandise subject to the *Order* is collated staples from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* we made no revisions to the countervailable subsidy rate calculations for Tianjin Hweschun, the sole mandatory respondent in this review.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of facts otherwise available, including with an adverse inference, pursuant to sections 776(a) and (b) of the Act.

Final Results of Review

We find the net countervailable subsidy rate for the mandatory respondent under review for the period of January 1, 2022, through December 31, 2022, to be as follows:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Tianjin Hweschun Fasteners Manufacturing Co., Ltd	70.10

Disclosure

Because Commerce has not modified its analysis or calculations from the Preliminary Results, there are no new calculations to disclose for these final results of review in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review for Tianjin Hweschun at the applicable *ad valorem* assessment rate listed above. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a

[1] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Results and Partial* Rescission of the Countervailing Duty Administrative Review; 2022, 89 FR 65598 (August 12, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2022 Countervailing Duty Administrative Review of Certain Collated Steel Staples from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated December 9, 2024.

[5] *See Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order,* 85 FR 43813 (July 20, 2020) (*Order*).

[6] *See* Memorandum, ''Final Results Calculations for Tianjin Hweschun Fasteners Manufacturing Co., Ltd.,'' dated concurrently with this notice; *see also Preliminary Results,* 89 FR at 65598; *see also* Memorandum, ''Post-Preliminary Analysis in the Countervailing Duty Administrative Review of Certain Collated Steel Staples from the People's Republic of China; 2022,'' dated October 3, 2024 (Post-Prelim).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for Tianjin Hweschun listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of the final results of review, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: December 10, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Diversification of China's Economy
V. Use of Facts Otherwise Available and Application of Adverse Inferences
VI. Subsidies Valuation Information
VII. Benchmarks
VIII. Analysis of Programs
IX. Discussion of the Issue
Comment: Whether Commerce Should Remove Inland Freight and Value-Added Taxes (VAT) From the Wire Rod and Galvanized Steel Wire Benchmarks
X. Recommendation

[FR Doc. 2024–29599 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–823, A–834–807, A–307–820]

Silicomanganese From India, Kazakhstan, and Venezuela: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on silicomanganese from India, Kazakhstan, and Venezuela would likely lead to the continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

DATES: Applicable December 10, 2024.

FOR FURTHER INFORMATION CONTACT: Jacob Waddell, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1369.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2002, Commerce published in the **Federal Register** the AD orders on silicomanganese from India, Kazakhstan, and Venezuela.[1] On May 1, 2024, the ITC instituted,[2] and Commerce initiated,[3] the fourth sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* be revoked.[4]

On December 10, 2024, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

For purposes of these *Orders,* the products covered are all forms, sizes and compositions of silicomanganese, except low-carbon silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese.

Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040.

The low-carbon silicomanganese excluded from this scope is a ferroalloy with the following chemical specifications: minimum 55 percent manganese, minimum 27 percent silicon, minimum 4 percent iron, maximum 0.10 percent phosphorus, maximum 0.10 percent carbon and maximum 0.05 percent sulfur. Low-carbon silicomanganese is used in the manufacture of stainless steel and special carbon steel grades, such as motor lamination grade steel, requiring a very low carbon content. It is sometimes referred to as ferromanganese-silicon. Low-carbon silicomanganese is classifiable under HTSUS subheading 7202.99.5040.

This scope covers all silicomanganese, regardless of its tariff

[1] *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela,* 67 FR 36149 (May 23, 2002) (*AD Orders*).

[2] *See Silicomanganese from India, Kazakhstan, and Venezuela; Institution of Five-Year Reviews,* 89 FR 35247 (May 1, 2024).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 89 FR 35073 (May 1, 2024).

[4] *See Silicomanganese from India, Kazakhstan, and Venezuela: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Orders,* 89 FR 67065 (August 19, 2024), and accompanying Issues and Decision Memorandum (IDM).

[5] *See Silicomanganese from India, Kazakhstan, and Venezuela Determinations,* 89 FR 99281 (December 10, 2024) (*ITC Final Determination*).

classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope remains dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be December 10, 2024.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: December 11, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–29604 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See ITC Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–812]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Belgium: Final Results of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Industeel Belgium S.A. (Industeel) made sales of subject merchandise at less than normal value during the period of review (POR), May 1, 2022, through April 30, 2023.

DATES: Applicable December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Jerry Xiao, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2273.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2024, Commerce published in the **Federal Register** the preliminary results of the 2022–2023 administrative review [1] of the antidumping duty order on certain carbon and alloy steel cut-to-length plate (CTL plate) from Belgium.[2] The review covers one mandatory respondent, Industeel. We invited parties to comment on the *Preliminary Results.*[3] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[4] On July 29, 2024, we received a case brief from Nucor Corporation (the petitioner).[5] On August 12, 2024, we received a rebuttal brief from Industeel.[6] On September 13, 2024, we extended the deadline for the final results until December 10, 2024.[7] Additionally, on December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.[8] Accordingly, the deadline for these final results is now March 10, 2025.

For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[9] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the *Order* are CTL plate from Belgium. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, Commerce made certain changes to the preliminary weighted-average dumping margin calculations for Industeel.[10]

Final Results of Review

As a result of this review, we determine that the following estimated weighted-average dumping margin exist for the period May 1, 2022, through April 30, 2023:

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Belgium: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022–2023,* 89 FR 48392 (June 6, 2024) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017) (*Order*).

[3] *See Preliminary Results.*

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[5] *See* Petitioner's Letter, ''Nucor's Case Brief,'' dated July 29, 2024.

[6] *See* Industeel's Letter, ''Industeel's Rebuttal Brief,'' dated August 12, 2024.

[7] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated September 13, 2024.

[8] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated December 9, 2024.

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[10] *See* Issues and Decision Memorandum.

Producer/exporter	Weighted-average dumping margin (percent)
Industeel Belgium S.A	2.52

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to parties in this review within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by Industeel in these final results of review for which Industeel did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Industeel will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit will continue to be the company-specific rate published in the completed segment for the most recently completed period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.40 percent, the all-others rate established in the LTFV investigation for this proceeding.[11] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to 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), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

[11] *See Order,* 82 FR at 24098.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 10, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of Issues
Comment 1: Industeel's Reported Section 232 Duties
Comment 2: Adjustments under the Transaction Disregarded Rule
Comment 3: Industeel's Reported Merchandise Processing Fee and Harbor Maintenance Fee
Comment 4: Correction of Certain Ministerial Errors and Adjustment to Certain Costs
VI. Recommendation

[FR Doc. 2024–29603 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–054]

Certain Aluminum Foil From the People's Republic of China: Amended Final Results of Countervailing Duty Administrative; 2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the countervailing duty administrative review of certain aluminum foil (aluminum foil) from the People's Republic of China (China) to correct a ministerial error. The period of review (POR) is January 1, 2022, through December 31, 2022.

DATES: Applicable December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Natasia Harrison or Harrison Tanchuck, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1240 or (202) 482–7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(b)(5), on November 12, 2024, Commerce published its final results in the countervailing duty administrative review of aluminum foil from China.[1] On November 13, 2024, the Aluminum Association Trade Enforcement Working Group and its individual members (collectively, the petitioners) timely alleged that Commerce made a ministerial error in the *Final Results*.[2] No party submitted rebuttal comments.

Scope of the Order [3]

The product covered by the scope of the *Order* is aluminum foil from China. A full description of the scope of the *Order* is contained in the *Final Results* IDM.

Ministerial Errors

Section 751(h) of the Act, and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.'' Commerce finds that the purported error alleged by the petitioners constitutes a ministerial error within the meaning of 19 CFR 351.224(f).[4] Specifically, we committed a ministerial error with regard to the calculation of mandatory respondent Jiangsu Zhongji Lamination Materials Co., (HK) Limited's (Zhongji HK's) input supplier company sales denominators, and consequently, the subsidy rate calculations performed in connection with Zhongji HK's affiliated input supplier company sales denominators. For a complete discussion of this alleged error, *see* the Ministerial Error Analysis Memorandum.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results*.[5] Specifically, we are amending the net subsidy rate for Zhongji HK. The revised net subsidy rate is provided in the table below. As a result of amending the net subsidy rate for Zhongji HK, we are also amending the rate for the non-selected companies, which is the average of the average of the rates calculated for two mandatory respondents, as provided in the table below.

Amended Final Results of Review

As a result of correcting the ministerial errors described above, Commerce determines the following net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022:

Company	Subsidy rate (percent *ad valorem*)
Hangzhou Five Star Aluminium Co., Ltd.[6]	[7] 29.90
Jiangsu Zhongji Lamination Materials Co., (HK) Limited [8]	[9] 25.24
Non-Selected Companies Under Review [10]	[11] 29.13

Disclosure

Commerce intends to disclose the calculations performed for these amended final results within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Rates

In accordance with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protections (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these amended final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies subject to this review, effective November 12, 2024, the date of publication of the *Final Results* in the **Federal Register**. For all non-selected companies, CBP will continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

---

[1] *See Certain Aluminum Foil from the People's Republic of China: Final Results of Countervailing Duty Administrative; 2022,* 89 FR 88957 (November 12, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Petitioners' Letter, ''Ministerial Error Allegation,'' dated November 13, 2024.

[3] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 83 FR 17360 (April 19, 2018); *see also Certain Aluminum Foil from the People's Republic of China: Notice of Court Decision Not in Harmony With the Amended Final Determination in the Countervailing Duty Investigation, and Notice of Amended Final Determination and Amended Countervailing Duty Order,* 85 FR 47730 (August 6, 2020) (collectively, *Order*).

[4] *See* Memorandum, ''Analysis of Ministerial Error Allegations,'' dated concurrently with this notice (Ministerial Error Analysis Memorandum).

[5] *See Final Results,* 89 FR at 88958.

[6] Commerce finds the following companies to be to be cross-owned with Five Star: Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd. (Jiangsu Dingsheng), Dingsheng Aluminum Industries (Hong Kong) Trading Co., Ltd. (Dingsheng HK), Hangzhou Dingsheng Import & Export Co., Ltd. (Dingsheng IE), Hangzhou Teemful Aluminium Co., Ltd. (Teemful), Inner Mongolia Liansheng New Energy Material Co., Ltd. or Inner Mongolia Liansheng New Energy Material Joint-Stock Co., Ltd. (Liansheng), Inner Mongolia Xinxing New Energy Material Co., Ltd. or Inner Mongolia Xinxing New Material Co., Ltd. (Xinxing), Hangzhou Dingsheng Industrial Group Co., Ltd. (Dingsheng Group), Hangzhou Dingcheng Aluminium Co., Ltd. (Dingcheng); Luoyang Longding Aluminum Co., Ltd. (Longding); Walson (HK) Trading Co., Limited (Walson HK); Dingheng New Materials Co., Ltd. (Dingheng) and Thai Ding Li New Materials Co., Ltd. (Ding Li), (collectively, Dingsheng Respondents). Walson HK, Dingheng and Ding Li were listed separately in *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 38021 (June 12, 2023) (*Initiation Notice*). *See* Dingsheng Respondents' Letter, ''Hangzhou Five Star Affiliation Response,'' dated August 25, 2023 (Dingsheng Respondents AQR) at Exhibit A.1.

[7] Unchanged from *Final Results.*

[8] As discussed in the *Preliminary Results,* Commerce finds the following companies to be to be cross-owned with Zhongji HK: Jiangsu Zhongji Lamination Materials Co., Ltd. (Zhongji) (FKA Jiangsu Zhongji Lamination Materials Stock Co., Ltd.); Jiangsu Huafeng Aluminium Industry Co., Ltd. (Jiangsu Huafeng); Shantou Wanshun New Material Group Co., Ltd. (Shantou Wanshun) (FKA Shantou Wanshun Package Material Stock Co., Ltd.); Anhui Zhongji Battery Foil Science & Technology Co., Ltd. (Anhui Zhongji) (FKA Anhui Maximum Aluminium Industries Company Limited); and Sichuan Wanshun Zhongji Aluminium Industry Co., Ltd. (Sichuan Wanshun). Anhui Zhongji, Anhui Maximum Aluminium Industries Company Limited, Jiangsu Huafeng, Zhongji, and Shantou Wanshun Package Material Stock Co., Ltd. were listed separately in the *Initiation Notice.*

[9] This net countervailable *ad valorem* subsidy rate reflects an entered value adjustment (EVA). *See Final Results* IDM at Comment 3.

[10] *See* Appendix for a list of the non-selected companies under review.

[11] The non-selected company rate reflects Five Star's *ad valorem* net countervailable subsidy rate and Zhongji HK's amended *ad valorem* net countervailable subsidy rate without the EVA, which is 28.35 percent. *See Final Results* IDM at Comment 3; *see also* Memorandum, ''Amended Final Results Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated concurrently with this notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the 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

We are issuing and publishing these amended final results of the review in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: December 10, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Non-Selected Companies Under Review

1. Alcha International Holdings Limited
2. Baotou Alcha Aluminum Co., Ltd.
3. Gränges Aluminum (Shanghai) Co., Ltd.
4. Guangxi Baise Xinghe Aluminum Industry Co., Ltd.
5. Hunan Suntown Marketing Limited
6. Jiangyin Dolphin Pack Ltd. Co.
7. Luoyang Longding Aluminium Industries Co., Ltd.
8. Shandong Yuanrui Metal Material Co., Ltd.
9. Shanghai Huafon Aluminium Corporation
10. Shanghai Shenhuo Aluminium Foil Co., Ltd.
11. Shanghai Shenyan Packaging Materials Co., Ltd.
12. SNTO International Trade Limited
13. Suntown Technology Group Corporation Limited
14. Xiamen Xiashun Aluminium Foil Co. Ltd.
15. Yangtai Jintai International Trade Co., Ltd.
16. Yantai Donghai Aluminum Co., Ltd.
17. Yinbang Clad Material Co., Ltd.
18. Zhejiang Zhongjin Aluminum Industry Co., Ltd.

[FR Doc. 2024–29600 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Dongkuk Coated Metal Co., Ltd. (Dongkuk) and certain companies not selected for individual examination made sales of subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) July 1, 2022, through June 30, 2023. In addition, Commerce determines that Hyundai Steel Company (Hyundai) did not make sales of subject merchandise in the United States at prices below NV during the POR.

DATES: Applicable December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2024, Commerce published the *Preliminary Results* of this administrative review of the antidumping duty order on certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) and invited interested parties to comment.[1] This administrative review covers 11 exporters and/or producers of the subject merchandise,[2] of which we selected Dongkuk and Hyundai as mandatory respondents. On December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.[3] Accordingly, the deadline for these final results is now March 10, 2025. For a summary of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [5]

The merchandise covered by this *Order* is CORE from Korea. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by parties in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average dumping margin calculation for Dongkuk,[6] as well as the preliminary weighted-average dumping margin assigned to the companies not selected for individual examination.

Rates for Companies Not Selected for Individual Examination

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for companies which we did not individually examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis,* or based entirely

[1] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 2022–2023, 89 FR 65596 (August 12, 2024) (*Preliminary Results*),and accompanying Preliminary Decision Memorandum.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 62322, 62326 (September 11, 2023).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated December 9, 2024.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2022–2023 Antidumping Duty Administrative Review: Certain Corrosion-Resistant Steel Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Order*).

[6] *See* Issues and Decision Memorandum at Comment 1.

on facts available (FA) in calculating an all-others rate. Accordingly, Commerce's practice in administrative reviews has been to average the weighted-average dumping margins for the companies selected for individual examination in the administrative review, excluding rates that are zero, *de minimis,* or based entirely on FA.[7] For these final results of review, we calculated a zero weighted-average dumping margin for Hyundai and a weighted-average dumping margin for Dongkuk that is not zero, *de minimis,* or based entirely on FA. Therefore, consistent with our practice, we have assigned the companies not selected for individual examination the weighted-average dumping margin calculated for Dongkuk.

Final Results of Review

We determine that the following weighted-average dumping margins exist for the period July 1, 2022, through June 30, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Dongbu Incheon Steel Co., Ltd	1.99
Dongkuk Coated Metal Co., Ltd., successor in interest to Dongkuk Steel Mill Co., Ltd.[8]	1.99
Dongkuk International, Inc	1.99
Hyundai Steel Company	0.00
KG Steel Corporation; KG Dongbu Steel Co., Ltd	1.99
POSCO	1.99
POSCO Coated & Color Steel Co., Ltd	1.99
POSCO International Corporation	1.99
POSCO STEELEON Co., Ltd	1.99
SeAH Coated Metal Corporation	1.99
SeAH Steel Corporation	1.99

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with these final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Pursuant to 19 CFR 351.212(b)(1), because Dongkuk reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. Because the final weighted-average dumping margin for Hyundai is zero, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[9]

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by the above-referenced respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (as amended) [10] if there is no rate for the intermediate company(ies) involved in the transaction.[11]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of CORE from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate established in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will

[7] *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[8] Commerce initiated this review on Dongkuk Steel Mill Co., Ltd. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 62322 (September 11, 2023). However, on November 16, 2023, Commerce concluded a changed circumstances review for Dongkuk Steel Mill Co., Ltd. finding that Dongkuk Coated Metal Co., Ltd. is its successor-in-interest. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Changed Circumstances Review,* 88 FR 78723 (November 16, 2023).

[9] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[10] *See Order;* and *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* 83 FR 39054 (August 8, 2018) (*Timken and Amended Final Results*).

[11] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[12] *See* section 751(a)(2)(C) of the Act.

continue to be 8.31 percent, the all-others rate established in the LTFV investigation (as amended) in this proceeding.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 10, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
Comment 1: Whether To Correct Dongkuk's General and Administrative (G&A) and Interest Expense Calculations
VI. Recommendation

[FR Doc. 2024–29675 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See Order,* and as amended by *Timken and Amended Final Results.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–848]

Truck and Bus Tires From Thailand: Antidumping Duty Order

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

SUMMARY: Based on the affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing an antidumping duty order on truck and bus tires from Thailand.

DATES: Applicable December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Faris Montgomery or Jonathan Schueler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1537 or (202) 482–9175, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended (the Act), on October 17, 2024, Commerce published in the **Federal Register** its affirmative final determination of sales at less-than-fair-value (LTFV) in the investigation of truck and bus tires from Thailand.[1] As part of its determination, Commerce made an affirmative crticial cirumstances finding for Bridgestone Corporation in the LTFV investigation. Pursuant to section 735(d) of the Act, on December 2, 2024, the ITC notified Commerce of its affirmative final determination that an industry in the United States is materially injured, within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of imports of truck and bus tires from Thailand that are sold in the United States at LTFV.[2] On December 6, 2024, in accordance with section 735(d) of the Act, the ITC published in the **Federal Register** its affirmative final injury determination in this investigation in which it found that an industry in the United States is materially injured by reason of imports of truck and bus tires from Thailand.[3] In addition, the ITC found that critical circumstances do not exist with regard to imports of truck and bus tires from Thailand.[4]

Scope of the Order

The products covered by this order are truck and bus tires from Thailand. For a complete description of the scope of this order, *see* the appendix to this notice.

Antidumping Duty Order

Based on the above-referenced affirmative final determinations, in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing this antidumping duty order. Moreover, because the ITC determined that U.S. imports of truck and bus tires from Thailand are materially injuring a U.S. industry, unliquidated entries of such merchandise from Thailand, entered or withdrawn from warehouse for consumption, as described below, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, for all relevant entries of truck and bus tires from Thailand. With the exception of entries occurring after expiration of the provisional measures period, but before publication of the ITC's final affirmative injury determination, as further described below, antidumping duties will be assessed on unliquidated U.S. entries of truck and bus tires from Thailand entered, or withdrawn from warehouse, for consumption on or after the date on which the suspension of liquidation was first ordered. As discussed in the *Final Determination,* with respect to Prinx Chengshan Tire (Thailand) Co., Ltd. (Prinx) this date is October 17, 2024, the date of publication of the *Final Determination* in the **Federal Register**.[5] With respect to Bridgestone Corporation and all other companies, this date is May 20, 2024, the date of publication of the *Preliminary Determination* in the **Federal Register**.[6]

[1] *See Truck and Bus Tires from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 89 FR 83636 (October 17, 2024) (*Final Determination*), and accompanying Issues and Decision Memorandum.

[2] *See* ITC's Letter, ''Notification of ITC Final Determination,'' dated December 2, 2024.

[3] *See Truck and Bus Tires from Thailand,* 89 FR 97069 (December 6, 2024) (*ITC Final Determination*).

[4] *Id.*

[5] *See Final Determination,* 89 FR at 83638.

[6] *Id.; see also Truck and Bus Tires from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative*

Continued

Critical Circumstances

With respect to the ITC's negative critical circumstances determination on imports of truck and bus tires from Thailand, we will instruct CBP to lift the suspension of liquidation and to refund all cash deposits for estimated antidumping duties with respect to entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 20, 2024, which is 90 days prior to the publication of the *Preliminary Determination,* but before May 20, 2024, which is the date of publication of the *Preliminary Determination.*[7]

Continuation of Suspension of Liquidation and Cash Deposits

Except as noted in the ''Provisional Measures'' section of this notice below, in accordance with section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation of all relevant entries of truck and bus tires from Thailand. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits at a rate equal to the estimated weighted-average dumping margins listed in the table below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's affirmative final injury determination, CBP will suspend the entries of liquidation of entries of subject merchandise and require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the weighted-average dumping margins listed in the table below. The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins for this antidumping duty order are as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Bridgestone Corporation	48.39
Prinx Chengshan Tire (Thailand) Co., Ltd	12.33
All Others	12.33

Determination of Critical Circumstances, and Postponement of Final Determination, 89 FR 43806 (May 20, 2024) (*Preliminary Determination*).

[7] *See Preliminary Determination.*

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. Commerce published the *Preliminary Determination* in this investigation on May 20, 2024. Commerce extended the deadline for issuing its final determination in this investigation, which it published in the **Federal Register** on October 17, 2024. Therefore, the six-month provisional measures period beginning on the date of publication of the *Preliminary Determination* for Bridgestone and all other companies ended on November 15, 2024. As noted above, suspension of liquidation for Prinx was not ordered until October 17, 2024, the date of publication of the *Final Determination* in the **Federal Register**;[8] therefore, the six-month provisional measures period for Prinx has not yet ended.

Consequently, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation, and to liquidate, without regard to antidumping duties, unliquidated U.S. entries of truck and bus tires from Thailand entered, or withdrawn from warehouse, for consumption on or after November 16, 2024, the first day on which the provisional measures were no longer in effect for Bridgestone and all other companies, through the day preceding the date of publication of the *ITC Final Determination* in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the *ITC Final Determination* in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws* in the **Federal Register**.[9] On September 27, 2021, Commerce published a notification titled *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions* in the **Federal Register**.[10] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[11]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be maintained in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [12]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance in the annual inquiry service list segment in ACCESS for the order within 30 days after the date of publication of the order in the **Federal Register**. For ease of administration, Commerce requests that a law firm with more than one attorney representing an interested party in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published in the **Federal Register**.

[8] *See Final Determination,* 89 FR at 83638.

[9] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[10] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[11] *Id.*

[12] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

Commerce may update an annual inquiry service list at any time, as needed, based on interested parties' amendments to their entries of appearance to remove, or otherwise modify, their list of members and representatives, or to update contact information. Changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [13] Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in the **Federal Register** in order to appear in the first annual inquiry service list. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to truck and bus tires from Thailand, pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *https://www.trade.gov/data-visualization/adcvd-proceedings.*

This antidumping duty order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 11, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The scope of the order covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by the scope may be tube-type, tubeless, radial, or non-radial (also known as bias construction or bias-ply). Subject tires have, at the time of importation, the symbol ''DOT'' on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and

HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a ''TR'' or ''HC'' suffix in their size designations are covered by the scope regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that fits trucks or busses. Sizes that fit trucks and busses include, but are not limited to, the numerical size designations listed in the ''Truck-Bus'' section of the Tire and Rim Association Year Book, as updated annually. The scope includes all tires that are of a size that fits trucks or busses, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, *etc.* Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope are the following types of tires: (1) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) the designation ''MH'' is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for ''Mobile Home Use Only;'' and (c) the tire is of bias construction (also known as non-radial construction) as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter ''R.''

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.90.1010, 4011.90.1050, 4011.90.2010, 4011.90.2050, 4011.90.8010, 4011.90.8050, 8708.70.4530, 8708.70.4546, 8708.70.4548, 8708.70.4560, 8708.70.6030, 8708.70.6045, 8708.70.6060, and 8716.90.5059.

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2024–29606 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See Final Rule,* 86 FR 52335.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–188, A–557–832, C–570–189, C–557–833]

Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Float Glass Products From the People's Republic of China and Malaysia

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

DATES: Applicable December 11, 2024.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov at (202) 482–0665 or Nathan James at (202) 482–5305 (the People's Republic of China) (China), Jeffrey Pedersen at (202) 482–2769, Mira Warrier at (202) 482–8031, or Benjamin Nathan at (202) 482–3834 (Malaysia), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Extension of Initiation of Investigation

The Petitions

On November 21, 2024, the U.S. Department of Commerce (Commerce) received antidumping and countervailing duty petitions on imports of float glass products from China and Malaysia, filed in proper form on behalf of Vitro Flat Glass, LLC and Vitro Meadville Flat Glass, LLC (the

petitioner), a domestic producer of float glass products.[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 it is not clear from the Petitions whether the industry support criteria have been met, 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 December 31, 2024.

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 11, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–29680 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties,'' dated November 21, 2024 (Petitions).

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; Coastal and Estuarine Land Conservation Planning, Protection or Restoration

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 18, 2025.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0459 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Elaine Vaudreuil, Program Analyst, NOAA Ocean Service, 1305 East-West Hwy, 202–936–6008, *Elaine.Vaudreuil@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Office for Coastal Management requests the extension of a currently approved information collection. NOAA has, or is given, authority under the Coastal Zone Management Act (CZMA), annual appropriations or other authorities, to issue funds to coastal states, localities or other recipients for planning, conservation, acquisition, protection, restoration, or construction projects. The required information enables NOAA to implement the Coastal and Estuarine Land Conservation Program (CZMA section 307A), under its current or future authorization, and facilitate the review of similar projects under different, but related, authorities, including the National Estuarine Research Reserve System (CZMA section 315) Land Acquisition and Construction program, the Coastal Zone Management Program's low-cost acquisition and construction program (CZMA section 306A), the Fish and Wildlife Coordination Act, or other authorities.

This collection covers the development of state coastal land conservation plans, and collection of information specifically needed for applying for and carrying out land acquisition, restoration and construction projects, such as: appraisals, property surveys and site plans, legal documentation such as deeds, easements and/or plats, and information needed for environmental compliance reviews. Such information is collected from project applicants or sub-recipients, which are typically state or local government agencies, but may also include nongovernmental or Tribal organizations.

The information will be used in evaluating project proposals, reviewing the location and impact of proposed activities, documenting compliance with the National Environmental Policy Act and other applicable statutes, and conducting due diligence on market value, title encumbrances, property boundaries, proper recording of legal instruments. No changes are proposed to the collection.

II. Method of Collection

Electronic formats are the preferred method for submitting Coastal and Estuarine Land Conservation Planning, Protection or Restoration (CELCP) plans, land conservation project applications, performance reports and other required materials. However, respondents may submit materials in electronic or paper formats. Project applications are normally submitted electronically via *Grants.gov,* but may be submitted by mail in paper form if electronic submittal is not a viable option. Methods of submittal for plans, performance reports or other required materials primarily include electronic submittal via email, secure file transfer, or eRA Commons, with submittal of paper forms or electronic files by mail if necessary.

III. Data

OMB Control Number: 0648–0459.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: State, Local, or Tribal Government; not-for-profit institutions.

Estimated Number of Respondents: 55.

Estimated Time per Response: CELCP Plans, 120 hours to develop, 35 hours to revise or update; project application and checklist, 20 hours; semi-annual and annual reporting, 5 hours each.

Estimated Total Annual Burden Hours: 1,455.

Estimated Total Annual Cost to Public: $55 in recordkeeping/reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–29755 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE417]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction of the Vineyard Northeast Offshore Wind Project Offshore of Massachusetts and Connecticut

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from Vineyard Northeast, LLC (Vineyard Northeast), for authorization to take small numbers of marine mammals incidental to the development of the Vineyard Northeast Offshore Wind Project (Project) in the Bureau of Ocean Energy Management (BOEM) Commercial Lease on the Outer Continental Shelf OCS–A–0522 off of Massachusetts (MA) and Connecticut (CT) over the course of 5 years beginning on January 1, 2028. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Vineyard Northeast's request for regulations governing the incidental taking of marine mammals and associated Letter of Authorization (LOA). NMFS invites the public to provide information, suggestions, and comments on Vineyard Northeast's application and request.

DATES: Comments and information must be received no later than January 16, 2025.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, Maryland 20910 and electronic comments should be sent to *ITP.taylor@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

An electronic copy of Vineyard Northeast's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking

will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On May 24, 2024, NMFS received an application from Vineyard Northeast requesting authorization to take marine mammals incidental to the development of the Project in the BOEM Lease Area OCS–A–0522 off of MA and CT. In response to our comments, and following an extensive information exchange with NMFS, Vineyard Northeast submitted a final revised application on November 18, 2024, which we deemed adequate and complete on November 18, 2024. Vineyard Northeast requests the regulations and subsequent Letter of Authorization (LOA) be valid for 5 years, beginning on January 1, 2028.

Vineyard Northeast has proposed to construct the Project (comprised of two sub-projects: Project 1 and Project 2) using impact and vibratory pile driving of wind turbine generators (WTG) foundations, impact pile driving of electrical service platform (ESP) foundations and a booster station, vibratory installation and removal of cofferdams at cable landfall sites, detonation of unexploded ordinances (UXOs), site characterization surveys, seabed preparation and scour protection application, and inter-array and export cable trenching, laying, and burial. Vessels would be used to transport crew, supplies, and materials to the project area to support construction. Vineyard Northeast has determined that a subset of these activities (*i.e.,* installing piles using impact and vibratory pile driving, vibratory installation and removal of cofferdams, site characterization surveys, and potential UXO detonation) may result in the take, by Level A harassment and/or Level B harassment, of marine mammals. Therefore, Vineyard Northeast requests authorization to incidentally take marine mammals. Take by mortality or serious injury of any marine mammal or take by Level A harassment of North Atlantic right whales is not requested.

Specified Activities

Vineyard Northeast proposes to develop, construct, and operate an offshore wind energy facility in the BOEM Lease Area OCS–A–0522 along with associated offshore and onshore transmission systems. The purpose of this facility would be to generate renewable electricity to meet the demand expressed by northeastern states and other users in order to achieve renewable energy and carbon emission reduction goals. The Lease Area is located within the southeastern portion of the MA Wind Energy Area and is approximately 46 kilometers (29 miles) from Nantucket. Offshore export cable corridors (OECC) would connect the Lease Area to landfall sites in MA and CT. Vineyard Northeast has divided the Lease Area into Project 1 (northeastern portion) and Project 2 (southwestern portion), as well as proposed two potential construction schedules consisting of a 2-year (Schedule A: 2030–2031) or 4-year (Schedule B: 2029–2032) timeline. The Project would consist of up to 160 wind turbine generator and electrical service platform positions within the Lease Area, and up to 4 offshore export cable bundles with 2 cable bundles making landfall in MA and 2 cable bundles making landfall in CT. If high voltage alternating current (HVAC) cables are used, Vineyard Northeast may install a booster station along the MA OECC in the northwestern portion of Lease Area OCS–A–0534 to increase efficiency of electrical transmission.

Vineyard Northeast anticipates the following activities may potentially result in the harassment of marine mammals during the effective period of the requested regulations and associated LOA:

- Installing up to 159 WTG monopile and/or piled jacket foundations with a maximum diameter of 14 meters (m) using a 6,600 or 8,000 kilojoules (kJ) impact hammer, vibratory hammer, and potential drilling;
- Installing up to three ESP foundations and one booster station foundation using piled jacket foundations comprised of 4.25 m pin piles driven with a 3,500 kJ impact hammer;
- Installing and removing up to 5 cofferdams comprised of sheet piles using a vibratory hammer;
- Using HRG equipment to survey the Lease Area over 64 days; and
- Potential detonation of up to 10 UXOs.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning Vineyard Northeast's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Vineyard Northeast, if appropriate.

Dated: December 11, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–29574 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice To Solicit Nominations for Membership on the National Sea Grant Advisory Board (NSGAB)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice to solicit nominations for membership on the National Sea Grant Advisory Board (NSGAB). *https://seagrant.noaa.gov/About/Advisory-Board.*

SUMMARY: The National Sea Grant Advisory Board (NSGAB) advises the National Sea Grant College Program (Sea Grant) in the areas of program evaluation, strategic planning, education and extension and science and technology programs. For more information on this Federal Advisory Committee please visit the Federal Advisory Committee database: *https://www.facadatabase.gov/FACA/FACAPublicPage.* This notice also responds to the Sea Grant Program Improvement Act of 1976, which

requires the Secretary of Commerce to solicit nominations at least once a year for membership on the NSGAB. To apply for membership to the Board, applicants should submit a current resume. A cover letter highlighting specific areas of expertise relevant to the purpose of the Board is helpful, but not required. Nominations will be accepted by Email at *oar.sg-feedback@noaa.gov.* While nominations are always accepted, to be considered for current openings, please submit your nomination no later than January 31, 2025. NOAA is an equal opportunity employer.

SUPPLEMENTARY INFORMATION: The Board, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Board advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

Privacy Act Statement

Authority. The collection of information concerning nominations to the NSGAB FAC is authorized under the FACA, as amended, 5 U.S.C. App. and its implementing regulations, 41 CFR part 102–3, and in accordance with the Privacy Act of 1974, as amended, (Privacy Act) 5 U.S.C. 552a. *Purpose.* The collection of names, contact information, resumes, professional information, and qualifications is required in order for the Under Secretary to appoint members to the NSGAB FAC. *Routine Uses.* NOAA will use the nomination information for the purpose set forth above. The Privacy Act of 1974 authorizes disclosure of the information collected to NOAA staff for work-related purposes and for other purposes only as set forth in the Privacy Act and for routine uses published in the Privacy Act System of Records Notice COMMERCE/DEPT–11, Candidates for Membership, Members, and Former Members of Department of Commerce Advisory Committees, available at *https://www.osec.doc.gov/opog/PrivacyAct/SORNs/dept-11.html,* and the System of Records Notice COMMERCE/DEPT–18, Employees Personnel Files Not Covered by Notices of Other Agencies, available at *https://www.osec.doc.gov/opog/PrivacyAct/SORNs/DEPT-18.html. Disclosure.* Furnishing the nomination information is voluntary; however, if the information is not provided, the individual would not be considered for appointment as a member of the NSGAB FAC.

David Holst,

Chief Financial Officer/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–29605 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE511]

Marine Mammals; File No. 28286

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that SeaWorld LLC, 6240 Sea Harbor Drive, Orlando, FL 32821 (Responsible Party: Chris Dold, DVM), has applied in due form for a permit to conduct research and enhancement activities on one stranded, non-releasable beluga whale (*Delphinapterus leucas*) from the endangered Cook Inlet distinct population segment (DPS).

DATES: Written comments must be received on or before January 31, 2025.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 28286 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 28286 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Ph.D., or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222 through 226).

The applicant proposes to conduct research on and provide long-term care for one male beluga whale (NOA0010477/''Tyonek'') from the depleted and endangered Cook Inlet DPS. This whale stranded as a neonate (estimated date of birth: September 1, 2017), and was rescued and rehabilitated by the Alaska marine mammal stranding network under the authority of the NMFS Marine Mammal Health and Stranding Response Program. NMFS determined him to be non-releasable and placed Tyonek with SeaWorld of Texas where he has been maintained for research and enhancement purposes since March 18, 2018.

Proposed research activities for this beluga whale include behavioral observations, underwater photography/videography, and active acoustic sonar imaging. The proposed enhancement activities include continued daily husbandry care (feeding, training, monitoring growth [measurements, weight, ultrasound]); veterinary care (exams and biological sampling including but not limited to blood, breath exhalate, oral swabs, skin scrapes, gastric fluids, urine, feces; and treatments as warranted); reproductive health assessment (testicular ultrasound); behavioral observations; and enrichment.

Tyonek would be placed on public display incidental to the proposed research and enhancement activities but would not be used in interactive programs with the public or trained for performance. Tyonek would be included in public educational presentations would address the endangered status and current threats to the Cook Inlet DPS and may include demonstrations of trained husbandry and enrichment behaviors as well as natural behaviors. Tyonek may be transported to another SeaWorld facility in consultation with NMFS, if deemed necessary for socialization or husbandry purposes. The permit is requested for a 5-year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 11, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–29618 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE529]

Marine Mammals; File No. 28533

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Leslie Hart, Ph.D., College of Charleston, 66 George Street, Charleston, SC 29424, has applied in due form for a permit to import, export, and receive marine mammal parts for scientific research.

DATES: Written comments must be received on or before January 16, 2025.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 28533 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 28533 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D., or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a 5-year permit to receive, import, and export parts from up to 700 individual cetaceans and 700 individual pinnipeds (excluding walrus) annually to investigate exposure to environmental microplastics. Sources of foreign and domestic parts may include captive animals, other authorized researchers or curated collections, bycatch from legal commercial fishing operations, and foreign stranded animals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 11, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–29587 Filed 12–16–24; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Childcare Benefit Forms

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 renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 18, 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: Courtney Russell, 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: Courtney Russell, at 202–380–7825 or by email at *crussell@americorps.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Childcare Benefit Forms.

OMB Control Number: 3045–0142.

Type of Review: Renewal.

Respondents/Affected Public: AmeriCorps members and their childcare providers.

Total Estimated Number of Annual Responses: 450 AmeriCorps members and 590 childcare providers.

Total Estimated Number of Annual Burden Hours: 520.

Abstract: AmeriCorps' childcare benefit forms are submitted by AmeriCorps members seeking childcare assistance and by the childcare providers identified by the members, for the purpose of applying for and receiving payment for the care of members' children during the day while the member is in service. Completion of this information is required to receive a benefit (*e.g.,* receive payment for childcare provider invoices). Eight forms are included in this information collection: (1) provider application; (2) member application; (3) childcare attendance sheet; (4) statement of work activity; (5) member update form; (6) childcare payment authorization; (7)

AmeriCorps unlicensed provider affidavit; and (8) program certification of active service. 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.*

Carly Bruder,

Acting Chief Program Officer.

[FR Doc. 2024–29610 Filed 12–16–24; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0133]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Director, Military Community Support Programs, Military Community and Family Policy, 4800 Mark Center Drive, Suite 14E08, Alexandria, VA 22350–2300, Erika Slaton, 571–372–5417; or (2) Director, Military Community Outreach (MCO) Directorate, Military Community and Family Policy, 4800 Mark Center Drive, Alexandria, VA 22350, Shondell Towns, 571–624–5809.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military OneSource Case Management System—Intake; OMB Control Number 0704–0528.

Needs and Uses: The Military OneSource program fulfills the requirement established in 10 U.S.C. 1781, ''Establishment of Online Resources to provide Information About Benefits and Services Available to Members of the Armed Forces and Their Families,'' and establishes an internet outreach website for the purpose of providing comprehensive information to members of the Armed Forces and their families about the benefits and services available to them. The Military OneSource Business Operations Information System drives the technological capabilities that deliver the full ecosystem of Military OneSource web-based services and capabilities that supports service members and families throughout their military life.

Affected Public: Individuals or households.

Annual Burden Hours: 242,711.

Number of Respondents: 242,711.

Responses per Respondent: 1.

Annual Responses: 242,711.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2024–29607 Filed 12–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0132]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security (OUSD(I&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Counterintelligence and Security Agency (DCSA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be

collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Counterintelligence and Security Agency, 27130 Telegraph Rd., Quantico, VA 22134, ATTN: Mr. Matthew Kitzman, (571) 305–6042.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Industrial Security Program Contracts Classification System; DD Form 254; OMB Control Number 0704–0567.

Needs and Uses: Pursuant to 48 CFR 27, in conjunction with subpart 4.4 of the Federal Acquisition Regulation, contracting officers shall determine whether access to classified information may be required by a contractor during contract performance. DoD Components shall use the DD Form 254, ''Contract Security Classification Specification,'' as an attachment to contracts or agreements requiring access to classified information by U.S. contractors. The DD Form 254 is used to identify the classified areas of information involved in a contract and the specific items of information that require protection. The National Industrial Security Program Contract Classification System (NCCS) is the electronic repository for the DD Form 254. NCCS expedites the processing and distribution of contract classification specifications for contracts requiring access to classified information. NCCS also has a built-in automated process for the Request for Approval to Subcontract and provides workflow support for the Facility Clearance Request and National Interest Determination processes.

Affected Public: Business or other for profit.

Annual Burden Hours: 28,800.

Number of Respondents: 8,000.

Responses per Respondent: 6.

Annual Responses: 48,000.

Average Burden per Response: 36 minutes.

Frequency: On occasion.

Respondents are cleared contractor facilities in the National Industrial Security Program under the security cognizance of DCSA. Pursuant to security classification guidance in 32 CFR part 117, NISP contractors must provide contract security classification specifications with any contract or agreement that they propose or award. DD Form 254 is the official vehicle for providing this information. A respondent submits completed DD Form 254 with any attachments to the applicable subcontractor and to the DoD NISP Cognizant Security Office for evaluation. Once the DD Form 254 is submitted, it is reviewed by Government Security personnel to ensure access language is present. Following review, Government Contracting Officers certify and release the DD Form 254 to the Industry Commercial and Government Entity referenced within the DD Form 254.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–29615 Filed 12–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0131]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Local Defense Community Cooperation announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Local Defense Community Cooperation, 2231 Crystal Drive, Arlington, VA 22202, ATTN: Mr. Michael Wilson or call (703) 697–2188.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Manufacturing Community Support Program Grant Proposals; OMB Control Number 0704–0606.

Needs and Uses: The Defense Manufacturing Community Support Program (DMCSP) is designed to undertake long-term investments in critical skills, facilities, research and development, and small business support in order to strengthen the

national security innovation and manufacturing base. The program also seeks to ensure complementarity of those communities so designated with existing Defense Manufacturing Institutes. Defense Manufacturing Institutes are manufacturing ecosystems with common manufacturing and design challenges revolving around specific technologies. The DMCSP is designed to recognize communities that demonstrate best practices in attracting and expanding defense manufacturing. This information collection is necessary to facilitate the identification of new Defense Manufacturing Communities and the awarding of grants under the DMCSP via a grant proposal package. The proposal package is prepared in accordance to a Federal Funding Opportunity Announcement posted on the *Grants.gov* website.

Affected Public: Businesses or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government.

Annual Burden Hours: 525.

Number of Respondents: 75.

Responses per Respondent: 1.

Annual Responses: 75.

Average Burden per Response: 7 hours.

Frequency: Annually.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2024–29611 Filed 12–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0134]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P&R) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Under Secretary of Defense (Personnel and Readiness), Military Personnel Policy, Office of Financial Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000, Ms. Loraine Heckenberg, (703) 695–3088.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Mandatory Disclosures as Part of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; OMB Control Number 0704–0444.

Needs and Uses: Title 10 U.S.C. 987 establishes limitations on terms of consumer credit extended to members of the Armed Forces and their dependents. The purpose of this information collection is to ensure disclosures required by 10 U.S.C. 987(c)(1) and discretionary checks of covered-borrower status stipulated in 32 CFR 232.5(b)(2) by creditors in the process of extending consumer credit.

Affected Public: Individuals or households.

Annual Burden Hours: 1,983,438.

Number of Respondents: 37,500.

Responses per Respondent: 6,347 averages (varies widely by type of respondent).

Annual Responses: 238,012,500.

Average Burden per Response: 30 seconds.

Frequency: On occasion.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2024–29609 Filed 12–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0130]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Local Defense Community Cooperation (OLDCC) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Local Defense Community Cooperation, 2231 Crystal Drive, Arlington, VA 22202, ATTN: Mr. Michael Wilson or call (703) 697–2188.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Community Infrastructure Program Grant Proposals; OMB Control Number 0704–0607.

Needs and Uses: Section 2391(d) of Title 10, United States Code (10 U.S.C. 2391), authorizes the Secretary of Defense to, ''make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense, for projects owned by a State or local government, or a not-for-profit, member-owned utility service to address deficiencies in community infrastructure supportive of a military installation.'' The Consolidated Appropriations Act for Fiscal Year 2021 (Pub. L. 116–260) provided $60 million to the Office of Local Defense Community Cooperation for the Defense Community Infrastructure Program (DCIP). This information collection supports the awarding of grants under DCIP via the initial grant proposal package prepared in accordance with a Federal Funding Opportunity Announcement posted on the *Grants.gov* website. The criteria established for the selection of community infrastructure projects reflects projects consisting of some combination of attributes that will enhance: (i) Military value; (ii) military installation resilience; and/or, (iii) military family quality of life at a military installation. Respondents can be State or local governments and not-for-profit, member-owned utility services owning infrastructure outside of, but supporting, a military installation.

Affected Public: State, Local or Tribal Government; Not-for-profit Institutions.

Annual Burden Hours: 2,250.

Number of Respondents: 150.

Responses per Respondent: 1.

Annual Responses: 150.

Average Burden per Response: 15 hours.

Frequency: Annually.

Respondents will be State or local Governments and not-for-profit, member-owned utility services owning infrastructure outside of, but supporting, a military installation. A Proposal Package shall include the following information: point of contact; summary of installation need; letter of endorsement from the Commander of the local installation; description of the proposed project with explanation of how it addresses the installation need; demonstration of the technical feasibility of the project; identification of other parties involved in the project; overview and commitment of all funding sources; uses of project funding, including a total project cost estimate with major cost elements broken out for project administration, inspection, construction, utilities, and contingency costs; project schedule demonstrating that the project can commence within 12 months upon receipt of a grant and that the grant funds will be spent steadily and expeditiously once the project commences, and completed no later than 5 years following the obligation of Federal funds; Environmental Approvals; State and Local Planning (if applicable); Evidence of the intended recipient's ability and authority to manage grants; Documentation that the Submitting Official is authorized by the proposer to submit a proposal and subsequently apply for assistance; and National Security Waiver Attestation (if appropriate).

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2024–29612 Filed 12–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0129]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Local Defense Community Cooperation (OLDCC) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 18, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Local Defense Community Cooperation, 2231 Crystal Drive, Arlington, VA 22202, ATTN: Mr. Michael Wilson or call (703) 697–2188.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: OLDCC Military Installation Sustainability Program of Assistance Grant Proposals; OMB Control Number 0704–0628.

Needs and Uses: This information collection facilitates the awarding of grants under the Office of Local Defense Community Cooperation (OLDCC) Military Installation Resilience Program of Assistance. OLDCC, in coordination

with the other Federal Agencies, delivers a program of technical and financial assistance to enable states and communities to plan and carry out civilian responses to workforce, business, and community needs arising from Defense actions; cooperate with their military installations and leverage public and private capabilities to deliver public infrastructure and services to enhance the military mission, achieve facility and infrastructure savings as well as reduced operating costs; and increase military, civilian, and industrial readiness and resiliency, and support military families. Respondents will be states, United States territories, counties, municipalities, other political subdivisions of a state, special purpose units of a state or local government, other instrumentalities of a state or local government, and tribal nations supporting a military installation or the defense industrial base. Grant proposal packages for the Military Installation Sustainability Program of Assistance will be prepared in accordance with the Federal Funding Opportunity Announcement posted in the **Federal Register**.

Affected Public: State, Local, or Tribal Government.

Annual Burden Hours: 480.

Number of Respondents: 12.

Responses per Respondent: 1.

Annual Responses: 12.

Average Burden per Response: 40 hours.

Frequency: Annually.

Dated: December 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–29613 Filed 12–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0117]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Private School Universe Survey (PSS) 2025–26 and 2027–28 Data Collections, and 2027–28 PSS Frame Development Activities

AGENCY: Institute of Educational Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 16, 2025.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Private School Universe Survey (PSS) 2025–26 and 2027–28 Data Collections, and 2027–28 PSS Frame Development Activities.

OMB Control Number: 1850–0641.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 32,550.

Total Estimated Number of Annual Burden Hours: 5,981.

Abstract: The National Center for Education Statistics (NCES), within the U.S. Department of Education, conducts the Private School Universe Survey (PSS), a national survey of private elementary and secondary schools. The PSS is designed to collect biennial data on the total number of private schools, teachers, and students; and to create an NCES universe frame of private schools that serve as a sampling frame for NCES surveys. This survey is an ongoing project to improve NCES universe and sample data on private schools.

This request is to conduct the 2025–26 and 2027–28 Private School Universe Survey (PSS) data collections, and the 2027–28 PSS frame-development activities.

Dated: December 11, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–29634 Filed 12–16–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Preventing Outages and Enhancing the Resilience of the Electric Grid Formula Grants to States and Indian Tribes

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy's (DOE's) National Energy Technology Laboratory (NETL) intends to issue, on behalf of the DOE Grid Deployment Office (GDO), an amendment to the Administrative Legal Requirements Document (ALRD) DE–FOA–0002736 (BIL—Preventing Outages and Enhancing the Resilience of the Electric Grid Formula Grants to States and Indian Tribes) in February 2025, titled Amendment 000010. This grant program is authorized under the Bipartisan Infrastructure Law (BIL). Amendment 000010 to DE–FOA–0002736 will provide access to Fiscal Year (FY) 2025 formula grant allocations.

ADDRESSES: Requests for more information should be addressed by electronic mail to Cory Felder, Senior Project Manager, at *cory.felder@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Cory Felder, (240) 597–8694, *cory.felder@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The BIL is a once-in-a-generation investment in infrastructure, which will grow a more sustainable, resilient, and equitable economy through enhancing U.S. competitiveness, driving the creation of good-paying union jobs, and ensuring access to economic, environmental, and other benefits for disadvantaged

communities.[1] The BIL appropriates more than $62 billion to DOE to invest in American manufacturing and workers [2] expand access to energy efficiency; deliver reliable, clean and affordable power to more Americans; and deploy the technologies of tomorrow through clean energy demonstrations. The forthcoming ALRD Amendment 000010, expected to take effect in February 2025 (available at: *https://www.fedconnect.net/fedconnect/?doc=DE-FOA-0002736&agency=DOE*) will support Congressional goals to (1) demonstrate measurable improvements in energy resilience in the United States and mitigate climate related risk, (2) invest in modernized grid infrastructure that can enable consumer access to lower-cost energy and accommodate increased electrification, increased penetrations of variable renewable electricity and distributed energy resources, and other evolving system needs over the coming decades, (3) invest in clean energy and decarbonization solutions to achieve a carbon-free power sector by 2035 and net-zero greenhouse gas emissions economy-wide by 2050, and (4) create good-paying jobs with the free and fair choice to join a union.

The purpose of the forthcoming ALRD Amendment 000010 is to allow for submission of applications for the FY 2025 formula grant allocations. The FY 2025 formula grant allocation amounts are available at: *https://netl.doe.gov/bilhub/grid-resilience/formula-grants.* The process for requesting a FY 2025 allocation depends on whether the applicant is an existing grant recipient or a new grant applicant:

- *Existing Grant Recipients* that have already received grants for FY 2022, FY 2023 or FY 2024 of the Program will have 90 days from issuance of the ALRD Amendment 000010 to request their FY 2025 allocation, in accordance with the Terms and Conditions of their current Grant award.
- *New Grant Applicants* are eligible applicants (as defined in ALRD Amendment 000010) that did not receive a grant for FY 2022, FY 2023 or FY 2024. New Grant Applicants will have 90 days from issuance of the ALRD Amendment 000010 to submit a grant application for a FY 2025 allocation. Several one-time actions, explained below, must be completed before an application can be submitted, including registration with the System for Award Management (SAM), obtaining a Unique Entity Identifier (UEI), and registering with *FedConnect.net.* These actions can be completed prior to the issuance of ALRD Amendment 000010. Prospective New Grant Applicants are encouraged to address these items as soon as possible, as some may take several weeks to complete. Additional instructions for New Grant Applicants will be provided in the ALRD Amendment 000010.

Note: Neither applications nor allocation requests are being accepted at this time.

The current ALRD (Amendment 000009) is available at: *https://www.fedconnect.net/fedconnect/?doc=DE-FOA-0002736&agency=DOE.*

New Grant Applicants must complete the following steps in order to submit their application via FedConnect: *https://www.fedconnect.net/fedconnect/?doc=DE-FOA-0002736&agency=DOE.*

Pre-application actions: *https://www.sam.gov/.*

SAM—Applicants must register with the SAM at: *https://www.sam.gov/* prior to submitting an application in response to this ALRD. Designating an Electronic Business Point of Contact (EBiz POC) and obtaining a special password called an MPIN are important steps in SAM registration. The applicant must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration. More information about SAM registration for applicants is available at: *https://www.fsd.gov/gsafsd_sp?id=gsafsd_kb_articles&sys_id=650d493e1bab7c105465eaccac4bcbcb.*

Note: If clicking the SAM links do not work, please copy and paste the link into your browser.

UEI—Applicants must obtain an UEI from the SAM to uniquely identify the entity. The UEI is available in the SAM entity registration record.

Note: Subawardees/subrecipients at all tiers must also obtain an UEI from the SAM and provide the UEI to the award recipient before the subaward can be issued.

Note: Due to the high demand of UEI requests and SAM registrations, entity legal business name and address validations are taking longer than expected to process. Entities should start the UEI and SAM registration process as soon as possible. If entities have technical difficulties with the UEI validation or SAM registration process they should utilize the HELP feature on *SAM.gov. SAM.gov* will address entity service tickets in the order in which they are received and asks that entities not create multiple service tickets for the same request or technical issue.

FedConnect.net—Applicants must register with FedConnect to submit applications in response to the ALRD, to submit questions, and to receive the award. FedConnect website: *https://www.fedconnect.net/.* For more information regarding registration with FedConnect, review the FedConnect Ready, Set, Go! Guide at: *https://www.fedconnect.net/FedConnect/Marketing/Documents/FedConnect_Ready_Set_Go.pdf.*

Electronic Signatures—Acknowledgement of award documents by the Grant Recipient authorized representative through electronic systems used by the Department of Energy, including FedConnect, constitutes the Grantee's acceptance of the Terms and Conditions of the award. Acknowledgement via FedConnect by the Grantee's authorized representative constitutes the Grantee's electronic signature.

Signing Authority

This document of the Department of Energy was signed on December 6, 2024, by Maria D. Robinson, Director, Grid Deployment Office, 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**.

[1] Pursuant to Executive Order (E.O.) 14008 (*www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/*), ''Tackling the Climate Crisis at Home and Abroad,'' January 27, 2021, and the Office of Management and Budget's Interim Justice40 Implementation Guidance M–21–28 (*www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf*) and Addendum M–23–09 (*www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf*), DOE recognizes disadvantaged communities as the census tracts identified as disadvantaged by the White House Council on Environmental Quality's Climate and Economic Justice Screening Tool (CEJST), located at *https://screeningtool.geoplatform.gov/*, as well as all Federally Recognized Tribes (whether or not they have land). See *https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf.* DOE's Justice40 Implementation Guidance is located at *https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf.*

[2] U.S. Department of Energy (November 2021) ''DOE Fact Sheet: The Bipartisan Infrastructure Deal Will Deliver For American Workers, Families and Usher in the Clean Energy Future.'' *https://www.energy.gov/articles/doe-fact-sheet-bipartisan-infrastructure-deal-will-deliver-american-workers-families-and-0.*

Signed in Washington, DC, on December 12, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–29696 Filed 12–16–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–18–000]

DCP Operating Company, LP; Notice of Petition for Declaratory Order

Take notice that on November 12, 2024, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, DCP Operating Company, LP (DCP Operating or Petitioner) filed a petition for declaratory order requesting that the Commission issue an order finding that upon DCP Operating's acquisition of certain pipeline facilities in the Anadarko Basin in various counties of Texas, Oklahoma, and Kansas, from Cimarron River Pipeline LLC, the facilities will perform a gathering function and are not subject to the Commission's jurisdiction under section 7 of the Natural Gas Act, 15 U.S.C. 717b, as more fully explained in the petition.

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. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically 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, Maryland 20852. The first page of any submission should include docket number CP25–18–000.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5 p.m. Eastern Time on January 10, 2025.

Dated: December 11, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29668 Filed 12–16–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP25–20–000.

Applicants: Midcontinent Express Pipeline LLC, Enable Oklahoma Intrastate Transmission, LLC.

Description: Midcontinent Express Pipeline LLC, et al. submit Joint Abbreviated Application for Authorization to Abandon a Capacity Lease Agreement and a Limited Jurisdiction Certificate.

Filed Date: 11/20/24.

Accession Number: 20241120–5060.

Comment Date: 5 p.m. ET 12/23/24.

Docket Numbers: RP25–277–000.

Applicants: Bear Creek Storage Company, L.L.C.

Description: Compliance filing: Annual Fuel Summary 2024 to be effective N/A.

Filed Date: 12/11/24.

Accession Number: 20241211–5053.

Comment Date: 5 p.m. ET 12/23/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR25–22–001.

Applicants: Public Service Company of Colorado.

Description: Amendment Filing: Statement of Rates_11–05–2024 Amended to be effective 11/5/2024.

Filed Date: 12/10/24.

Accession Number: 20241210–5178.

Comment Date: 5 p.m. ET 12/31/24.

§ 284.123(g) Protest: 5 p.m. ET 2/10/25.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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 11, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29670 Filed 12–16–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: December 19, 2024, 10 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda.

* NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Debbie-Anne A. Reese, Secretary, Telephone (202) 502–8400.

For a recorded message listing items Stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1120TH—MEETING, OPEN

[December 19, 2024, 10:00 a.m.]

Item No	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD25–1–000	Agency Administrative Matters.
A–2	AD25–2–000	Customer Matters, Reliability, Security and Market Operations.
	ELECTRIC	
E—1	ER24–2025–000	Wilderness Line Holdings, LLC.
E—2	ER24–1848–000, ER24–1848–001	Portland General Electric Company.
E—3	ER24–1156–000, ER24–1156–001	Florida Power & Light Company.
E—4	EL24–104–001	*PJM Load Parties* v. *PJM Interconnection, L.L.C.*
E—5	EL24–18–000	*Urban Grid Solar Projects, LLC* v. *PJM Interconnection, L.L.C.*
E—6	ER24–232–002, ER24–232–000	New York Transco, LLC and New York Independent System Operator, Inc.
E—7	ER24–1614–002, ER24–1614–000	Orange and Rockland Utilities Inc.
E—8	ER24–679–002	Duke Energy Carolinas, LLC and Duke Energy Florida, LLC.
	ER24–683–001	Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and Duke Energy Florida, LLC.
E—9	RR24–4–000	North American Electric Reliability Corporation.
E—10	RM25–3–000	Reliability Standards for Frequency and Voltage Protection Settings and Ride-Through for Inverter-Based Resources.
E—11	ER24–2401–001	PJM Interconnection, L.L.C.
E—12	EL24–145–000, QF24–935–001	PFMD–LL-Jessup, LLC.
E—13	EC24–111–000	Algonquin Power Co., Altius Renewables, ULC, Algonquin Energy Services Inc., Algonquin Power Sanger LLC, Altavista Solar, LLC, Carvers Creek LLC, Clearview Solar I, LLC, Deerfield Wind Energy, LLC, Deerfield Wind Energy 2, LLC, Great Bay Solar I, LLC, Great Bay Solar II, LLC, GSG 6, LLC, Minonk Wind, LLC, New Market Solar ProjectCo 1, LLC, New Market Solar ProjectCo 2, LLC, Odell Wind Farm, LLC, Sandy Ridge Wind, LLC, Sandy Ridge Wind 2, LLC, Shady Oaks Wind 2, LLC, and Sugar Creek Wind One LLC.
E—14	EC24–105–000	ALLETE, Inc. and Alloy Parent LLC.
E—15	EL23–16–000	*RENEW Northeast, Inc.* v. *ISO New England Inc. and New England Participating Transmission Owners Advisory Committee*.
	GAS	
G—1	RP23–466–002	Florida Gas Transmission Company, LLC.
	HYDRO	
H—1	P–3211–010	Power Authority of the State of New York.
H—2	P–13768–005	Solia 6 Hydroelectric, LLC.
H—3	P–15248–001	RAMM Power Group, LLC.
	CERTIFICATES	
C—1	CP24–492–000	Hess Tioga Gas Plant LLC.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: December 12, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–30057 Filed 12–13–24; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15376–000]

Kram Hydro 8, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 11, 2024, Kram Hydro 8, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project that would be located at the U.S. Army Corps of Engineers' (Corps) Howell Heflin Lock and Dam on Tennessee-Tombigbee River, near the Town of Gainesville, in Sumter County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Howell Heflin Lock and Dam Hydroelectric Project would consist of the following: (1) a 125-foot-wide, 350-foot-long armored intake channel; (2) a 125-foot-long, 125-foot-wide concrete powerhouse located downstream of the existing Corps dam on the eastern bank, containing two Kaplan turbine-generator units, with a combined generating capacity of 30 megawatts; (3) a 200-foot-long, 125-foot-wide unlined tailrace; and (4) a 2.75-mile-long, 46 kilovolt transmission line. The proposed project would have an estimated annual generation of 208.4 gigawatt-hours.

Applicant Contact: Kristen Fan, Kram Hydro 8, 3120 Southwest Fwy., Suite 101, PMB 50808, Houston, TX 77080; phone: (772) 418–2705.

FERC Contact: Prabharanjani Madduri; phone: (202) 502–8017, or by email at *prabharanjani.madduri@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne 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 Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15376–000.

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.*

More information about this project, including a copy of the application, can be viewed, or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15376) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 11, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29669 Filed 12–16–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–12–000]

Rover Pipeline LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Rover-Bulger Compressor Station and Harmon Creek Meter Station Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Rover-Bulger Compressor Station and Harmon Creek Meter Station Expansion Project (Project) involving construction and operation of facilities by Rover Pipeline LLC (Rover) in Smith Township, Washington County, Pennsylvania. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on January 10, 2025. Comments may be

submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on October 31, 2024, you will need to file those comments in Docket No. CP25–12–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Rover provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP25–12–000) on your letter. 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, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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.*

Summary of the Proposed Project

Rover proposes to construct, own, and operate certain facilities at its existing Bulger Compressor Station, located at milepost 0 of Rover's Burgettstown Lateral in Washington County, Pennsylvania. The proposed expansion of the Bulger Compressor Station would consist of the following facilities:

- one new 2,750-horsepower compressor unit package and cooling;
- one discharge filter separator;
- one unit blowdown silencer;
- extension of the existing compressor building and station fencing; and
- associated interconnect piping systems.

The Project also includes expansion of Rover's existing Harmon Creek Receipt Meter Station located within the Bulger Compressor Station. The proposed meter station expansion consist of one ultrasonic meter skid, one flow control skid, one filter separator, and associated interconnect piping. The Rover-Bulger Compressor Station and Harmon Creek Meter Station Expansion Project would allow Rover to ensure delivery of Range Resources—Appalachia LLC's (Range) requested transportation quantities at the required pressures. According to Rover, the Project is designed to provide to an additional 400,000 dekatherms of natural gas per day.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The Project would impact about 8.38 acres of land within and immediately adjacent to Rover's existing Bulger Compressor Station. About 8.05 acres of land would be used for temporary workspace, including 6.62 acres of existing aboveground facilities, 1.09 acres of an existing permanent access road, 0.24 acre of an existing parking area, and 0.10 acre of a temporary access road. Of the 8.38 acres, about 0.33 acre of open space land cover would be permanently impacted due to the extension of the compressor station fence line by 50 feet. Rover would convert the 0.33 acre of open space land cover to gravel to accommodate the addition of the new compressor unit and building.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP24–88–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is 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. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: December 11, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

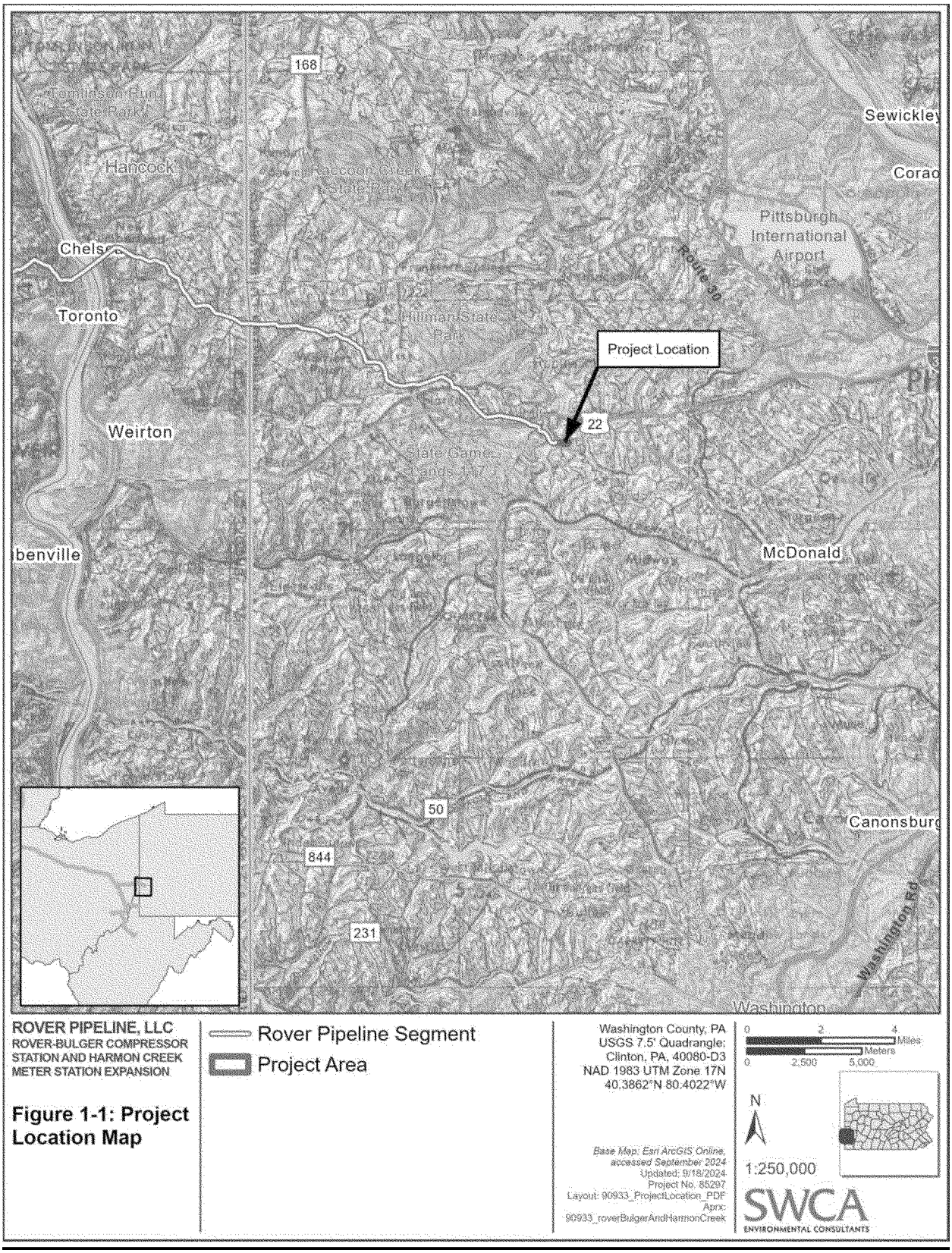
Appendix 1

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.


168
Hancock
Raccoon Creek State Park
Sewickley
Pittsburgh International Airport
Route 30
Chelsea
Toronto
Hillman State Park
Project Location
22
Weirton
State Game Lands 217
McDonald
Canonsburg
50
844
231
Washington Rd
Washington
ROVER PIPELINE, LLC
ROVER-BULGER COMPRESSOR STATION AND HARMON CREEK METER STATION EXPANSION
Figure 1-1: Project Location Map
Rover Pipeline Segment
Project Area
Washington County, PA
USGS 7.5' Quadrangle:
Clinton, PA, 40080-D3
NAD 1983 UTM Zone 17N
40.3862°N 80.4022°W
0 2 4 Miles
0 2,500 5,000 Meters
N
1:250,000
Base Map: Esri ArcGIS Online, accessed September 2024
Updated: 9/18/2024
Project No. 85297
Layout: 90933_ProjectLocation_PDF
Aprx: 90933_roverBulgerAndHarmonCreek
SWCA
ENVIRONMENTAL CONSULTANTS

Appendix 2

MAILING LIST UPDATE FORM

Rover-Bulger Compressor Station and Harmon Creek Meter Station Expansion Project

Name_____

Agency_____

Address_____

City_____**State**_____ **Zip Code**_____

☐ **Please update the mailing list**

☐ **Please remove my name from the mailing list**

FROM_____

_____

_____

_____

ATTN: OEP - Gas 5, PJ - 11.5

Federal Energy Regulatory Commission

888 First Street NE

Washington, DC 20426

CP25-12-000 Rover-Bulger Compressor Station and Harmon Creek Meter Station Expansion Project

Staple or Tape Here

[FR Doc. 2024–29667 Filed 12–16–24; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25–28–000.
Applicants: Plus Power, Cranberry Point Energy Storage, LLC, Cross Town Energy Storage, LLC, Energy Storage Resources, LLC, Sierra Estrella Energy Storage LLC, Superstition Energy Storage LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Plus Power, LLC, et al.
Filed Date: 12/10/24.
Accession Number: 20241210–5208.
Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: EC25–29–000.
Applicants: Washington Wind LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Washington Wind LLC.
Filed Date: 12/10/24.
Accession Number: 20241210–5213.
Comment Date: 5 p.m. ET 12/31/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG25–59–000.
Applicants: SMT Mission II LLC.
Description: SMT Mission II LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 12/11/24.
Accession Number: 20241211–5028.
Comment Date: 5 p.m. ET 1/1/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1411–005; ER12–1436–021; ER15–1447–009; ER18–280–010; ER18–533–008; ER18–534–008; ER18–535–008; ER18–536–008; ER18–537–008; ER18–538–009; ER20–2048–003; ER21–573–006; ER21–574–006; ER21–575–006; ER21–2317–002; ER22–48–006.
Applicants: Gridflex Generation, LLC, Richland-Stryker Generation LLC, Lanyard Power Marketing, LLC, Dickerson Power, LLC, Chalk Point Power, LLC, Ellwood Power, LLC, Sidney, LLC, Monument Generating Station, LLC,O.H. Hutchings CT, LLC, Yankee Street, LLC, Montpelier Generating Station, LLC, Tait Electric Generating Station, LLC, Lee County Generating Station, LLC, Mid-Georgia Cogen L.P., Eagle Point Power Generation LLC, GenOn Bowline, LLC.
Description: Notice of Non-Material Change in Status of Bowline, LLC, et al.
Filed Date: 12/10/24.
Accession Number: 20241210–5212.
Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: ER20–2186–003; EL20–62–001.
Applicants: Fern Solar LLC, Fern Solar LLC.
Description: Schedule 1 to Fern Solar LLC's compliance filing to the 10/17/2024 Commission's order, Opinion No. 591, Order on Initial Decision.
Filed Date: 12/9/24.
Accession Number: 20241209–5276.
Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: ER25–679–000.
Applicants: AlbertaEx, L.P.
Description: § 205(d) Rate Filing: Filing of Contribution in Aid and Construction Agreement_ITCMW RS 236 to be effective 2/8/2025.
Filed Date: 12/9/24.
Accession Number: 20241209–5159.
Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: ER25–688–000.
Applicants: The Potomac Edison Company.
Description: § 205(d) Rate Filing: Potomac Edison's Request for Order Authorizing Abandoned Plant Incentive to be effective 2/10/2025.
Filed Date: 12/11/24.
Accession Number: 20241211–5051.
Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: ER25–689–000.
Applicants: Cooperative Energy.
Description: § 205(d) Rate Filing: 2024–12–11_SA 4411 Cooperative Energy-Bluestown Solar E&P (J2127) to be effective 12/12/2024.
Filed Date: 12/11/24.
Accession Number: 20241211–5054.
Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: ER25–690–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 375—Papago LGIA Amendment No. 1 to be effective 2/10/2025.
Filed Date: 12/11/24.
Accession Number: 20241211–5063.
Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: ER25–691–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 619 to be effective 11/12/2025.
Filed Date: 12/11/24.
Accession Number: 20241211–5095.
Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: ER25–692–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: UAMPS TSOA Rev 9 (R.S. No. 297) to be effective 2/10/2025.
Filed Date: 12/11/24.
Accession Number: 20241211–5096.
Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: ER25–693–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: UMPA TSOA Rev 7 (R.S. No. 637) to be effective 2/10/2025.
Filed Date: 12/11/24.
Accession Number: 20241211–5097.
Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: ER25–694–000.
Applicants: San Diego Gas & Electric.
Description: § 205(d) Rate Filing: 2025 RS Filing to be effective 1/1/2025.
Filed Date: 12/11/24.
Accession Number: 20241211–5157.
Comment Date: 5 p.m. ET 1/1/25.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 11, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–29665 Filed 12–16–24; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2023–0268; FRL 10613–02–OW]

Final National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: This notice announces issuance by all 10 Environmental Protection Agency (EPA) Regions of the final 2026 National Pollutant Discharge Elimination System (NPDES) pesticide general permit (PGP)—the 2026 PGP. The 2026 PGP, which has an effective date of October 31, 2026, replaces the existing permit (2021 PGP) that expires on October 30, 2026, and authorizes certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. The EPA is issuing this permit for five (5) years in all areas of the country where the EPA is the NPDES permitting authority.

DATES: The permit becomes effective on October 31, 2026, and will expire at 11:59 p.m. on October 30, 2031. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on December 31, 2024 Under section 509(b) of the Clean Water Act (CWA), judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b) of the CWA, the requirements of this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of a Notices of Intent (NOI) to be covered, if required, are provided in Part 1.2.3, Table 1–2 of the 2026 PGP.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate EPA Regional office listed on EPA's NPDES website at *https://www.epa.gov/npdes/contact-us-pesticide-permitting,* email *PGP@epa.gov,* or contact Dr. Lauren Mosesso, EPA Headquarters, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–1012; email address: *Mosesso.Lauren@epa.gov*. Electronic versions of the 2026 PGP and Fact Sheet are also available on EPA's NPDES website at *https://www.epa.gov/npdes/pesticide-permitting*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
- A. Does this action apply to me?
- B. How can I get copies of this document and other related information?
- C. Geographic Coverage
- D. Who are the EPA regional contacts for this final permit?

II. Background
III. Summary of the 2026 PGP
- A. Summary of 2026 PGP Terms and Requirements
- B. 2026 PGP Cost Analysis

IV. Executive Orders 12866 and 13563
V. 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
VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

I. General Information

A. Does this action apply to me?

You may be affected by this action if you apply pesticides, under the use patterns in Part 1.1.1. of the 2026 PGP, that result in a discharge to a water of the United States in one of the geographic areas identified in Appendix C of the 2026 PGP. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THE 2026 PGP

Category	NAICS	Examples of potentially affected entities
Agricultural entities—General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products.	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation	Operating irrigation systems.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	923120 Administration of Public Health Programs.	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs.	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THE 2026 PGP—Continued

Category	NAICS	Examples of potentially affected entities
	924120 Administration of Conservation Programs.	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

B. How can I get copies of this document and other related information?

Docket. EPA has established a docket for this action under Docket ID No. [EPA–HQ–OW–2023–0268]. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays). For further information on the EPA Docket Center services and the current status, see: *https://www.epa.gov/dockets.*

C. Geographic Coverage

The EPA provides permit coverage for classes of point source discharges of pollutants that occur in areas where the EPA is the NPDES permitting authority which includes Massachusetts, New Hampshire, New Mexico, the District of Columbia, all U.S. territories except the U.S. Virgin Islands, Federal facilities in Delaware, Vermont, Colorado, and Washington, all Indian Country except in Maine, and where applicable, Lands of Exclusive Federal Jurisdiction. The geographic coverage of the 2026 PGP is listed in Appendix C of the permit.

D. Who are the EPA regional contacts for this final permit?

For the list of EPA Regional contacts, visit the EPA's NPDES website at *https://www.epa.gov/npdes/contact-us-pesticide-permitting.*

II. Background

Section 301(a) of the CWA provides that ''the discharge of any pollutant by any person shall be unlawful'' unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines ''discharge of a pollutant'' as ''(A) any addition of any pollutant to navigable waters from any point source and (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 U.S.C. 1362(12). A ''point source'' is any ''discernible, confined and discrete conveyance'' but does not include ''agricultural stormwater discharges and return flows from irrigated agriculture.'' 33 U.S.C. 1362(14).

The term ''pollutant'' includes among other things ''garbage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water.'' 33 U.S.C. 1362(6).

A person may discharge a pollutant without violating the section 301 prohibition by obtaining authorization to discharge (referred to herein as ''coverage'') under a section 402 NPDES permit (33 U.S.C. 1342). Under section 402(a), the EPA may ''issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)'' upon certain conditions required by the Act.

The EPA issued the first Pesticide General Permit (''2011 PGP'') on October 31, 2011, in response to the United States Sixth Circuit Court of Appeals ruling vacating EPA's 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America.* v. *EPA,* 553 F.3d 927 (6th Cir. 2009). The EPA developed the PGP to control point source discharges of biological pesticides and chemical pesticides that leave a residue into waters of the United States. In 2016 and 2021 respectively, The EPA issued the second PGP (2016 PGP) and third PGP (2021 PGP). After the EPA issued the 2021 PGP in September 2021, a petition for review of the permit was filed in the U.S. Court of Appeals for the Ninth Circuit. *Center for Biological Diversity* v. *EPA and FWS,* No. 21–71306 (9th Cir.) The petition filed by the Center for Biological Diversity (CBD) challenged EPA's permit issuance under the CWA, and the EPA and the U.S. Fish and Wildlife Service (FWS) actions with respect to the permit under the Endangered Species Act (ESA). After CBD filed the petition, EPA, FWS, and CBD entered into settlement discussions. A settlement agreement resulted from these discussions, which the parties entered into on July 25, 2023 (Settlement Agreement). The Settlement Agreement does not affect the provisions in the 2021 PGP, but several terms concern what was to be proposed in the 2026 PGP. Information on the Settlement Agreement is available in Docket ID EPA–HQ–OGC–2023–0247–0002.

The EPA is issuing the 2026 PGP to replace the 2021 PGP which expires on October 30, 2026. Like the previously issued PGP, the 2026 PGP provides coverage for certain point source discharges of pollutants to waters of the United States in areas where the EPA is the NPDES permitting authority. The EPA published the draft 2026 PGP and accompanying Fact Sheet in the **Federal Register** on November 28, 2023 (88 FR 83120), soliciting comments on the draft permit. The EPA also conducted consultation with Indian Tribal Governments. The EPA received 12 written comment letters on the draft permit. The EPA considered all comments received during the comment period in preparing the final permit. The EPA responded to all significant comments in the Response to Comment Document which is available as part of the docket for this permit.

III. Summary of the 2026 PGP

A. Summary of 2026 PGP Terms and Requirements

While the requirements of the 2026 PGP remain largely the same as those in the previously issued PGPs, a summary of updates from the 2021 PGP and from the proposed 2026 PGP are outlined in the 2026 PGP Fact Sheet. The 2026 PGP is structured in the same nine parts as the previously issued PGPs: (1) Coverage under This Permit, (2) Technology-Based Effluent Limitations, (3) Water Quality-Based Effluent Limitations and Other Limitations, (4) Monitoring, (5) Pesticide Discharge Management Plan, (6) Corrective Action, (7) Recordkeeping and Annual Reporting, (8) EPA Contact Information and Mailing Addresses, and (9) Permit Conditions Applicable Within Specific States (including Territories) and Indian Country. Additionally, as with the previously issued PGPs, the 2026 PGP includes nine appendices with additional conditions and guidance for permittees: (A) Definitions, Abbreviations, and Acronyms, (B) Standard Permit Conditions, (C) Areas Covered, (D) Notice of Intent (NOI) form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation Worksheet (PDEW), (G) Annual Reporting Template, (H) Adverse Incident Report Template, and (I) PGP Eligibility Worksheet for Threatened and Endangered Species Protection. A summary of the 2026 PGP's requirements is provided in the 2026 PGP Fact Sheet.

B. 2026 PGP Cost Analysis

The cost analysis accompanying this final permit monetizes and quantifies certain incremental cost impacts of the final permit changes as compared to the 2021 PGP. The EPA analyzed each change in the 2026 PGP considering the previous permit's requirements. The objective of the cost analysis is to show where or to what extent the 2026 PGP requirements impose an incremental increase in administrative and compliance costs (such as sampling and monitoring costs) on Operators in relation to costs that are already accounted for in the 2021 PGP. As a majority of the changes in the final permit are to clarify requirements in previously issued permits, the EPA expects minimal incremental cost impact on entities that will be covered under the 2026 PGP. For further discussion, see Appendix D of the fact sheet.

IV. Executive Orders 12866 and 13563

The 2026 PGP is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

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

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. As part of the general permit development process, the EPA reviews available information to evaluate whether issuance of a permit could affect overburdened communities. The EPA has determined that a more in-depth environmental justice analysis is not feasible for this permit reissuance due to the limited amount of and format of information the EPA currently has available. The information supporting this Executive Order review is contained in Appendix E of the fact sheet.

VI. 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 neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. The EPA directly implements the NPDES Program, including the 2026 PGP, in Indian Country; therefore, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with Tribal officials early in the process to provide Tribes an opportunity to have meaningful and timely input into the renewal of the PGP. To gain an understanding of, and where appropriate, to address Tribal implications of the draft 2026 PGP, the EPA conducted the following activities:

- August 22, 2023—the EPA emailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP. The initiation letter was also posted on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at *https://tcots.epa.gov/.*
- September 19 and 21, 2023—the EPA held two informational webinars open to all tribal representatives and reserved the last part of each webinar for official consultation comments. Eighteen Tribal representatives participated in the webinars. No official comments were received during the webinars. The presentation was posted on the Tribal portal website at *https://tcots.epa.gov.*

The EPA received one comment from Tribes and Tribal organizations during the consultation and coordination period. Records of the Tribal informational webinars and a consultation summary are included in the docket for this proposed action (Docket ID No. EPA–HQ–OW–2023–0268). The EPA has considered the comment received in the proposal. The Agency specifically solicited additional comment on this proposed permit during the public comment period. The EPA also notes that as part of the finalization of this permit, the Agency completed CWA section 401 certification procedures with all applicable authorized Tribes where this permit will apply (see Part 9 and Appendix C of the PGP).

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

David Cash,
Regional Administrator, EPA Region 1.
Javier Laureano Perez,
Director, Water Division, EPA Region 2.
Carmen Guerrero Perez,
Director, Caribbean Environmental Protection Division, EPA Region 2.
Michelle Price-Fay,
Director, Water Division, EPA Region 3.
Kathlene Butler,
Director, Water Division, EPA Region 4.
Tera Fong,
Director, Water Division, EPA Region 5.
Troy Hill,
Director, Water Division, EPA Region 6.
Jeffery Robichaud,
Director, Water Division, EPA Region 7.
Stephanie DeJong,
Manager, Clean Water Branch, EPA Region 8.
Tomas Torres,
Director, Water Division, EPA Region 9.
Mathew Martinson,
Director, Water Division, EPA Region 10.

[FR Doc. 2024–29657 Filed 12–16–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0341; FRL–12497–01–OAR]

Notice of Availability of One New Chapter in the Environmental Protection Agency's Air Pollution Control Cost Manual—Dry Sorbent Injection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that we are adding one chapter to the current EPA Air Pollution Control Cost Manual (henceforth, Control Cost Manual). The EPA is requesting comment on: Chapter 2, Section 5, ''Dry Sorbent Injection.'' This new Control Cost Manual chapter covers control measures for sulfur dioxide (SO_2) and acid gas emissions.

DATES: Comments must be received on or before March 17, 2025. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on submitting comments on the provided data.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2015–0341, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail*: U.S. Environmental Protection Agency, EPA Docket Center, Docket No. EPA–HQ–OAR–2015–0341, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. to 4:30 p.m., Monday through Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Larry Sorrels, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, C439–02, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; telephone number: (919) 541–5041; email address: *sorrels.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is requesting comment on the specific Control Cost Manual chapter included in this notice.

Written Comments: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0341, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The 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), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA docket office, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulation (CFR) part 2.

2. *Tips for Preparing your Comments.* When submitting comments, remember to: Identify the notification by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language/data for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information Available for Public Comment

The EPA is requesting comment on one new chapter of the EPA Air

Pollution Control Cost Manual. The Control Cost Manual contains individual chapters on emissions control measures, including data and equations to aid users in estimating capital costs for installation and annual costs for operation and maintenance of these measures, and data concerning the percentage of pollutant emissions that control measures can reduce. The Control Cost Manual is used by the EPA for estimating the impacts of rulemakings and serves as a basis for sources to estimate costs of controls that are Best Available Control Technology (BACT) under the New Source Review Program, the Regional Haze Program, Reasonably Achievable Control Technology (RACT) for State Implementation Plans (SIPs) and for other programs.

The one updated Control Cost Manual chapter is: Chapter 2, Section 5, ''Dry Sorbent Injection.'' This revised Control Cost Manual chapter can be found in the docket for the Control Cost Manual update (Docket ID No. EPA–HQ–OAR–2015–0341). The current Control Cost Manual version (sixth edition) is available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution#cost%20manual,* and last updated in 2003.

The Consolidated Appropriations Act of 2014 requested that the EPA begin development of a seventh edition of the Control Cost Manual. The EPA has met with state, local, and Tribal officials to discuss plans for the Control Cost Manual update as called for under the Consolidated Appropriations Act of 2014. The EPA has met with other groups as well at their request. Since 2014, the EPA has updated the selective non-catalytic reduction (SNCR) and selective catalytic reduction (SCR) chapters, the first two chapters (Chapter 1, Section 4; Chapter 2, Section 4, respectively) completed for the seventh edition of the Control Cost Manual and made them available to the public in May 2016 (81 FR 38702, June 14, 2016) and also updated these chapters again in May 2019. In addition, the EPA has updated the Refrigerated Condensers (Chapter 1, Section 3 and Section 3.1) and Incinerators (Chapter 2, Section 3, Section 3.2, now Incinerators/Oxidizers) chapters in November 2017, the Cost Estimation: Concepts and Methodology chapter (Chapter 2, Section 1) as of November 2017, the Carbon Adsorbers (Chapter 1, Section 3, Section 3.1) and Flares (Chapter 1, Section 3, Section 3.2) chapters in October 2018, and the Gas Absorbers (now Wet and Dry Scrubbers for Acid Gas, Chapter 1, Section 5) chapter in May 2021. Finally, the EPA is currently updating the Fabric Filters (Chapter 1, Section 6) chapter, with the expected date for its finalization to be in 2025.

To help focus review of the Dry Sorbent Injection chapter, we offer the following list of questions that the EPA is particularly interested in addressing in this new Control Cost Manual chapter. Regardless of the topics that are covered in this list of questions, commenters are welcome to address any aspects of this chapter. Please provide supporting data for responses to these questions and for other comments on the chapter.

For the Dry Sorbent Injection Chapter

(1) What is a reasonable and up-to-date estimate of equipment life (defined as design or operational life) for dry sorbent injection (or DSI) systems—that is, an entire DSI system? Please provide data, if possible, on accurate estimates of equipment life.

(2) Are the descriptions of and technical background on DSI complete, up to date, and accurate with regard to control of SO_2 and acid gas? Please provide information, if possible, on descriptions of and background on control by DSI of SO_2 and acid gases if you do not believe that the descriptions in the draft chapter are complete, up to date, and accurate.

(3) Is the applicability of DSI to various types of emissions sources complete, up to date, and accurate?

(4) Are the estimates of SO_2 removal or control efficiency for DSI accurate and up-to-date? If not, what are more accurate estimates? Please provide data, if possible, to address inaccuracies. Please offer the same for acid gas (*e.g.,* hydrogen chloride (HCl)) removal or control efficiency.

(5) Is the information accurate on how DSI operate in tandem with control technologies such as fabric filters and electrostatic precipitators (ESP) to reduce particulate matter (PM) and activated carbon injection (ACI) to reduce mercury? Please provide data, if possible, to address inaccuracies.

(6) Are the capital cost correlations, factors, and equations for DSI applied to various types of emissions sources and industries accurate and up to date? If not, how should they be revised? Please provide data, if possible, to address inaccuracies.

(7) Are the annual costs (such as operating and maintenance costs) for DSI applied to various types of emissions sources and industries accurate and up-to-date? In particular, are the sorbent data, both types of sorbent and sorbent prices, for use in DSI accurate and up-to-date? If not, how should they be revised? Please provide data, if possible, to address inaccuracies.

(8) How can neural networks and computational fluid dynamics be used, separately or integrated, to enhance the design and optimization of DSI for improved SO_2 and acid gas control efficiency and overall efficiency? What are the costs of including such techniques in the design and operation of DSI?

Erika N. Sasser,

Director, Health and Environmental Impacts Division.

[FR Doc. 2024–29727 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0093; FRL–12320–01–OCSPP]

Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and/or Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel their registrations of certain product registrations and/or to amend their product registrations to terminate one or more uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and/or uses have been terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before January 16, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0093, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

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

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. 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.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by EPA of requests from registrants to cancel certain and/or terminate certain uses of product registrations. The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of these requests, EPA intends to issue an order canceling and/or amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
279–3455	279	Marvel Herbicide	Fluthiacet-methyl (108803/117337–19–6)—(1.2%), Fomesafen (123803/72178–02–0)—(30.08%)
279–3568	279	Dawn Herbicide	Sodium salt of fomesafen (123802/108731–70–0)—(22.8%)
279–3569	279	Rhythm Herbicide	Sodium salt of fomesafen (123802/108731–70–0)—(22.1%)
2749–642	2749	Dicrotophos Technical	Dicrotophos (035201/141–66–2)—(85%)
2749–643	2749	Dicromax XP Insecticide	Bifenthrin (128825/82657–04–3)—(10.8%), Dicrotophos (035201/141–66–2)—(43.1%)
7401–38	7401	Ferti-Lome Liquid Carbaryl Home Garden Spray.	Carbaryl (056801/63–25–2)—(23.7%)
7401–69	7401	Ferti Lome Garden Dust	Carbaryl (056801/63–25–2)—(5%)
7401–166	7401	Hi-Yield 10% Carbaryl Garden Dust	Carbaryl (056801/63–25–2)—(10%)
9386–34	9386	AMA–204	Terbuthylazine (080814/5915–41–3)—(4%)
9386–42	9386	AMA–2500G	Glutaraldehyde (043901/111–30–8)—(25%)
9386–43	9386	AMA–1500G	Glutaraldehyde (043901/111–30–8)—(15%)
9386–46	9386	AMA–480WB	1,2-Benzisothiazolin-3-one (098901/2634–33–5)—(19%)
9386–47	9386	AMA–80S	1,2-Benzisothiazolin-3-one (098901/2634–33–5)—(19%)
33427–35	33427	Dicrotophos Technical	Dicrotophos (035201/141–66–2)—(85%)
47000–113	47000	Roberts Dust'M	Gardona (cis-isomer) (083702/22248–79–9)—(3%)
47000–122	47000	RL–2-Rabon Livestock Dust	Gardona (cis-isomer) (083702/22248–79–9)—(3%)
47000–125	47000	Crown All Purpose Livestock and Poultry Dust with Rabon.	Gardona (cis-isomer) (083702/22248–79–9)—(3%)
FL–080008	62719	G–120 NF Naturalyte Fruit Fly Bait	Spinosad (110003/131929–60–7)—(.02%)
MN–230002	87865	Spin-Aid Herbicide	Phenmedipham (098701/13684–63–4)—(15.9%)
NC–090001	62719	Lorsban Advanced	Chlorpyrifos (059101/2921–88–2)—(40.2%)
NC–090004	62719	Lorsban Advanced	Chlorpyrifos (059101/2921–88–2)—(40.2%)
NC–180002	5481	Parazone 3SL Herbicide	Paraquat dichloride (061601/1910–42–5)—(43.8%)
ND–230001	87865	Spin-Aid Herbicide	Phenmedipham (098701/13684–63–4)—(15.9%)
NY–120006	67690	SP 1908 Aquatic Herbicide	Fluridone (112900/59756–60–4)—(6.3%)
NY–120017	67690	Sonar SRP	Fluridone (112900/59756–60–4)—(5%)
NY–130001	67690	Sonar X	Fluridone (112900/59756–60–4)—(5%)
TX–040027	62719	Lock-On	Chlorpyrifos (059101/2921–88–2)—(22.9%)
TX–080018	62719	Starane Ultra	Fluroxypyr 1-methylheptyl ester (128968/81406–37–3)—(45.52%)
TX–180004	62719	Lorsban Advanced	Chlorpyrifos (059101/2921–88–2)—(40.2%)
TX–220002	100	Gramoxone® SL 2.0	Paraquat dichloride (061601/1910–42–5)—(30.1%)
WY–180001	5481	Parazone 3SL Herbicide	Paraquat dichloride (061601/1910–42–5)—(43.8%)

TABLE 2—PRODUCT REGISTRATION WITH PENDING REQUEST FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
8383–3	8383	Sporicidin Disinfectant Solution ..	Phenol (064001/108–95–2)—(1.56%), Sodium phenate (064002/139–02–6)—(.06%).	Fogging Use

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS.

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
2749	Aceto Life Sciences, L.L.C., D/B/A Actylis, Agent Name: Product & Regulatory Associates, LLC, 8595 Collier Blvd., Suite 107–51, Naples, FL 34114.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
7401	Voluntary Purchasing Groups, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 535 Dock Street, Suite 211, Tacoma, WA 98402.
8383	Contec, Inc., 525 Locust Grove, Spartanburg, SC 29303.
9386	Kemira Water Solutions, Inc., Agent Name: Ramboll, 4245 North Fairfax Drive, Suite 700, Arlington, VA 22203.
33427	Aceto US, L.L.C., D/B/A/Actylis, Agent Name: Product & Regulatory Associates, LLC, 8595 Collier Blvd., Suite 107–51, Naples, FL 34114.
47000	Chem-Tech, Ltd., 620 Lesher Place, Lansing, MI 48912.
62719	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
67690	SePRO Corporation, 11550 N. Meridian Street, Suite 600, Carmel, IN 46032.
87865	Belchim Crop Protection US Corporation, 225 Wilmington West Chester Pike, Suite 200, Chadds Ford, PA 19317.

III. What is the Agency's authority for taking this action?

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 canceled or amended to terminate one or more 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**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks 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 action. If the requests for voluntary cancellation and/or amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and/or for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1 and 2 of Unit II.

For voluntary product cancellations, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and/or products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and/or terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 11, 2024.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024–29753 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–SFUND–2024–0439; FRL 12259–01–R5]

Request for Public Comment on Settlement Agreement for Licking Chemical Spill Site, Licking County, Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 5, of a proposed administrative settlement for recovery of past response costs concerning the Licking Chemical Spill Site (Site) in Licking County, Ohio with William H. Trucking, LLC, as the Settling Party and Respondent.

DATES: Comments must be received on or before January 16, 2025.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R05–SFUND–2024–0439, by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Don Schwer, Enforcement Investigator, Superfund & Emergency Management Division, Region 5, EPA, 77 West Jackson Blvd. (SE–5J); telephone number: 312–353–8752; email address: *schwer.don@epa.gov.*

SUPPLEMENTARY INFORMATION: The settlement requires the Respondent to pay $300,000 in past response costs. The settlement includes a covenant not to sue pursuant to sections 107(a) of CERCLA, 42 U.S.C. 9607(a), relating to the Site, subject to limited reservations, and protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2). For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to this settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at *https://response.epa.gov/LickingChemicalSpill.*

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–R05–SFUND–2024–0439, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The 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), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

Douglas Ballotti,

Director, Superfund & Emergency Management Division, Region 5.

[FR Doc. 2024–29663 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Adoption of Categorical Exclusions from the Department of Energy Under the National Environmental Policy Act

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of adoption of multiple Categorical Exclusions from the Department of Energy.

SUMMARY: The Export-Import Bank of the United States (EXIM) is adopting multiple categorical exclusions (CEs) from the agencies as listed: Department of Energy Ces A9, B1.15, B1.23, B2.1, B2.2, and B3.1. This notice identifies the categories of proposed actions and describes the consultation between the agencies.

DATES: The Ces identified below are available for EXIM to use for its proposed actions effective December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Scott Condren (VP Policy Analysis), *Scott.Condren@exim.gov,* (202) 565–3777; Tiffin Caverly (VP Engineering & Environment), *Tiffin.Caverly@exim.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and Ces

The National Environmental Policy Act, 42 U.S.C. 4321–4347, (NEPA) requires Federal agencies to interpret and administer Federal policies, regulations, and laws in accordance with NEPA's policies and to consider environmental values in their decision making.

Federal agencies are required to provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment.[1] NEPA also created the Council of Environmental Quality (CEQ) as the body responsible for implementing NEPA.

Categorical exclusions (Ces) can be used when there is a determination the proposed type of action would not have a significant effect on the human environment; this option eliminates the need for an environmental assessment (EA) or more detailed environmental impact statement (EIS).[2] CEQ considers Ces ''an important mechanism to promote efficiency in the NEPA process'' and recognizes an agency's ability to ''identify and substantiate categories of actions that normally do not have a significant effect on the human environment''.[3]

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to ''adopt'' or use another agency's Ces for a category of proposed agency actions.[4] To use another agency's Ces under section 109, an agency must identify the relevant Ces listed in another agency's (''establishing agency'') NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the

[1] 40 CFR 1500.1.

[2] 40 CFR 1501.4.

[3] 88 FR 49924.

[4] 42 U.S.C. 4336c.

proposed adoption of the CE to a category of actions is appropriate; identify to the public the CE that the agency plans to use for its proposed actions; and document adoption of the CE. EXIM has prepared this notice to meet these statutory requirements.

Program Background

As the official export credit agency of the United States, ''the mission of the Export-Import Bank of the United States is to support the creation of American jobs by facilitating the export of U.S. goods and services.'' The Export–Import Bank of the United States (EXIM) steps in when the private sector does not provide financing for American businesses. The Bank's actions have historically helped support these firms in competing with foreign businesses overseas. The Make More in America (MMIA) initiative applies EXIM's authorities for medium and long-term (MLT) loans, loan guarantees, and insurance to export-oriented domestic projects. In doing so, MMIA allows EXIM to support American business during the whole export lifecycle. The purpose of such loans remains unchanged: to support U.S. employment.

As EXIM usually lends to projects outside the United States, NEPA has not often been applicable as there is no impact to the human environment in the United States. In the new MMIA initiative which focuses on domestic lending, adopting Ces from another agency will speed up the processing time of deals and conserve staff resources with no need for an EA or EIS. Faster processing times in this initiative will greatly facilitate EXIM's support of American businesses and workers.

II. Identification of the Categorical Exclusions

Department of Energy Ces

A9 Information Gathering, Analysis, and Dissemination

Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site characterization or environmental monitoring. (See also B3.1 of appendix B to this subpart.)

B1.15 Supporting Buildings

Siting, construction or modification, and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated and modular buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible). Covered support buildings and structures include, but are not limited to, those for office purposes; parking; cafeteria services; education and training; visitor reception; computer and data processing services; health services or recreation activities; routine maintenance activities; storage of supplies and equipment for administrative services and routine maintenance activities; security (such as security posts); fire protection; small-scale fabrication (such as machine shop activities), assembly, and testing of non-nuclear equipment or components; and similar support purposes, but exclude facilities for nuclear weapons activities and waste storage activities, such as activities covered in B1.10, B1.29, B1.35, B2.6, B6.2, B6.4, B6.5, B6.6, and B6.10 of this appendix.

B1.23 Demolition and Disposal of Buildings

Demolition and subsequent disposal of buildings, equipment, and support structures (including, but not limited to, smoke stacks and parking lot surfaces), provided that there would be no potential for release of substances at a level, or in a form, that could pose a threat to public health or the environment.

B2.1 Workplace Enhancements

Modifications within or contiguous to an existing structure, in a previously disturbed or developed area, to enhance workplace habitability (including, but not limited to, installation or improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation, and noise reduction).

B2.2 Building and Equipment Instrumentation

Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, remote control panels, remote monitoring capability, alarm and surveillance systems, control systems to provide automatic shutdown, fire detection and protection systems, water consumption monitors and flow control systems, announcement and emergency warning systems, criticality and radiation monitors and alarms, and safeguards and security equipment).

B3.1 Site Characterization and Environmental Monitoring

Site characterization and environmental monitoring (including, but not limited to, siting, construction, modification, operation, and dismantlement and removal or otherwise proper closure (such as of a well) of characterization and monitoring devices, and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis). Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance. Covered activities include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. (This class of actions excludes activities in aquatic environments. See B3.16 of this appendix for such activities.) Specific activities include, but are not limited to:

(a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, radar, and temperature gradient), geochemical, and engineering surveys and mapping, and the establishment of survey marks. Seismic techniques would not include large-scale reflection or refraction testing;

(b) Installation and operation of field instruments (such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools);

(c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;

(d) Aquifer and underground reservoir response testing;

(e) Installation and operation of ambient air monitoring equipment;

(f) Sampling and characterization of water, soil, rock, or contaminants (such as drilling using truck- or mobile-scale equipment, and modification, use, and plugging of boreholes); 5

(g) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(h) Installation and operation of meteorological towers and associated activities (such as assessment of potential wind energy resources);

(i) Sampling of flora or fauna; and

(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.

The Department of Energy Ces also includes additional conditions referred

to as integral elements. (10 CFR part 1021 subpt. D, app. B) In order to apply these CEs, the proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of the Department of Energy or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or Comprehensive Environmental Response, Compensation and Liability Act-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, State, or local government, or a Federally recognized Indian Tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, State, or local government, federally recognized Indian Tribe, or Native Hawaiian organization; or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or federally proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; Federally protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands (as defined in 10 CFR 1022.4, ''Compliance with Floodplain and Wetland Environmental Review Requirements: Definitions,'' or its successor);

(iv) Areas having a special designation such as Federally and State-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), ''Farmland Protection Policy Act: Definitions,'' or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

EXIM intends to apply these categorical exclusions to loans, loan guarantees, and insurance transactions. The scope of projects would be akin to projects from the Department of Energy's Loans Program Office to which DOE has applied these categorical exclusions. These include limited construction, full disposal of buildings, desk work for feasibility studies, soil testing, etc. In principle, such transactions would be similar to those EXIM's export finance transactions deemed a category C under its environmental and social procedures and guidelines.[5]

[5] EXIM's Environmental and Social Due Diligence Procedures and Guidelines state that ''applications greater than $10 Million will be classified as Category C if they are not related to a physical project or if they relate to projects which do not require further environmental review because they are likely to have minimal or no adverse environmental or social risks or impacts. This category includes transactions related to new, expansion or existing projects of the type that have little or no potential to cause environmental effects and do not impact sensitive locations.'' Procedures and Guidelines | *EXIM.GOV*.

III. Consideration of Extraordinary Circumstances (if Applicable)

In assessing whether a categorical exclusion applies, EXIM would review whether there were extraordinary circumstances that would indicate a categorical exclusion is not appropriate due to the potential for a significant environmental effect. EXIM would review that proposed actions do not breach the integral elements of classes of action in DOE's regulations (10 CFR 1021, subpart D, appendix B (1)–(5)). When applying these Ces, EXIM will consider whether the proposed action has the potential to result in significant effects as described in DOE's definition of extraordinary circumstances. DOE defines extraordinary circumstances as unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources. 10 CFR 1021.410(b)(2).

EXIM's engineering and environment division will have responsibility for determining if a categorical exclusion applies. These determinations will be posted at *https://www.exim.gov/policies/exim-bank-and-environment/make-more-america-initiative-approved-transactions.*

Consultation and Determination of Appropriateness

Consultations

1. Department of Energy Consultation

In October 2024, EXIM conducted consultation with the Department of Energy's Loans Program Office on adoption of several CE categories. Through those consultation and coordination efforts, DOE and EXIM mutually agreed that EXIM's adoption of CEs A9 (Information gathering, analysis, and dissemination), B1.15 (Supporting Buildings), B1.23, (Demolition and disposal of buildings), B2.1 (Workplace enhancements), B2.2 (Building and equipment instrumentation) and B3.1(site characterization and environmental monitoring) is appropriate. This notice documents EXIM's adoption of Department of Energy CEs for such actions.

At the conclusion of that process, DOE determined that EXIM's proposed use of the CE as described in this notice would be appropriate because the categories of actions for which EXIM plans to use the CE are consistent with the adopted CEs.

Notice to the Public and Documentation of the Adoption

This notice serves to identify to the public and document EXIM's adoption of several CEs from both the Department of Energy. The notice identifies the types of actions to which EXIM will apply the CE, as well as the considerations that EXIM will use in determining whether an action is within the scope of the CE.

Scott Condren,

Vice President, Policy Analysis.

[FR Doc. 2024–29608 Filed 12–16–24; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 24–1235; FR ID 267996]

In the Matter of 2,411 Robocall Mitigation Database Filers

AGENCY: Federal Communications Commission.

ACTION: Notice of Order.

SUMMARY: On December 10, 2024, the Enforcement Bureau (Bureau) released an Order directing the 2,411 companies named in Appendix A to the Order (each, a Company; collectively, the Companies) to cure the deficiencies in each Company's Robocall Mitigation Database (RMD) certification and notify the Bureau that the deficiencies have been cured, or to file a response explaining why the Bureau should not remove the Company's certification from the RMD. Each Company's RMD certification is deficient because a robocall mitigation plan was not provided or the plan lacks newly-required information; and the certification lacks newly-required information. Removal of a Company's certification from the RMD would require all intermediate providers and voice service providers to cease accepting all calls directly from the Company.

DATES: Responses are due no later than December 31, 2024.

ADDRESSES: The responses must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, ATTN: Enforcement Bureau—Telecommunications Consumers Division. The responses must also be emailed to *EnforcementBureauTCD@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Kristi Thompson, Federal Communications Commission, Enforcement Bureau, Telecommunications Consumers Division, 45 L Street NE, Washington, DC 20554 or at *kristi.thompson@fcc.gov,* 202–418–1318.

SUPPLEMENTARY INFORMATION: The Bureau adopted the Order pursuant to sections 4(i), 4(j), 227b, 251(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227b, 251(e), and 403, and §§ 0.111, 0.311, 1.1, and 64.6305 of the Commission's rules, 47 CFR 0.111, 0.311, 1.1, and 64.6305. The Order is available here: *https://docs.fcc.gov/public/attachments/DA-24-1235A1.pdf.*

Federal Communications Commission.

Peter S. Hyun,

Acting Chief, Enforcement Bureau.

[FR Doc. 2024–29800 Filed 12–16–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 89 FR 97617.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, December 12, 2024 at 10 a.m., Hybrid Meeting: 1050 First Street NE, Washington, DC (12th Floor) and Virtual.

CHANGES IN THE MEETING: The following item was also discussed: Statement of Policy Regarding the Notification of Respondents in Matters Under Review Remanded from a Challenge Pursuant to 52 U.S.C. 3019(a)(8).

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2024–30054 Filed 12–13–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 89 FR 94730.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, December 10, 2024 at 10 a.m. and its continuation at the conclusion of the open meeting on December 12, 2024.

CHANGES IN THE MEETING: The meeting also discussed: Matters relating to internal personnel decisions, or internal rules and practices.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2024–30051 Filed 12–13–24; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments 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 2, 2025.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent

electronically to *Comments.applications@chi.frb.org*:

1. *Christopher M. George, Fremont, California;* to acquire voting shares of Greenwoods Financial Group, Inc., and thereby indirectly acquire voting shares of The Greenwood's State Bank, both of Lake Mills, Wisconsin.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–29729 Filed 12–16–24; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0198; Docket No. 2024–0053; Sequence No. 20]

Information Collection; Certain Federal Acquisition Regulation Part 9 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning certain Federal Acquisition Regulation (FAR) part 9 requirements. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through April 30, 2025. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by February 18, 2025.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0198, Certain Federal Acquisition Regulation Part 9 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0198, Certain Federal Acquisition Regulation Part 9 Requirements.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

1. FAR 52.209–1, Qualification Requirements. This clause requires offerors to provide with their proposal: Their name, the manufacturer's name, source's name, item's name, service identification, and test number (if known) for a proposed product or service that has already been determined to meet the qualification standards. If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, this clause requires the offeror to submit evidence of qualification prior to award of a contract.

2. FAR 52.209–2, 52.209–10, and 52.212–3(n), Prohibition on Contracting with Inverted Domestic Corporations. FAR provision 52.209–2, Prohibition on Contracting with Inverted Domestic Corporations-Representation, and its equivalent for commercial acquisitions at FAR 52.212–3(n), requires each offeror to represent whether it is, or is not, an inverted domestic corporation or a subsidiary of an inverted domestic corporation.

FAR clause 52.209–10, Prohibition on Contracting with Inverted Domestic Corporations, requires contractors to promptly notify the contracting officer in the event the contractor becomes an inverted domestic corporation or a subsidiary of an inverted domestic corporation during the period of performance of the contract.

3. FAR 52.209–5, 52.209–6, and 52.212–3(h), Debarment, Suspension, and other Responsibility Matters. FAR provision 52.209–5, Certification Regarding Responsibility Matters, and its equivalent for commercial acquisitions at FAR 52.212–3(h), require the disclosure of the following critical information by an offeror to be considered by the contracting officer in making a responsibility determination:

- Whether the offeror or any of its principals have been—
  - Debarred, suspended, proposed for debarment, declared ineligible for contract award;
  - Within a three-year period preceding their offer:
- Convicted of or had a civil judgment rendered against them or indicted for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract, violation of Federal or State antitrust statutes relating to the submission of offers, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- Notified of any delinquent Federal taxes in an amount that exceeds $10,000 for which the liability remains unsatisfied;
- Had one or more contracts terminated for default by any Federal agency; or
- Are presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses identified above.

If the offeror has responded affirmatively to the certifications in the FAR provisions at 52.209–5 or 52.212–3(h), the offeror shall provide additional information if requested by the contracting officer.

The offeror shall also provide immediate written notice to the contracting officer if, at any time prior

to contract award, the offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Paragraph (c) of the FAR clause at 52.209–6, Protecting the Government's Interest When Subcontracting with Contractor's Debarred, Suspended, or Proposed for Debarment, requires the contractor to require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available off-the-shelf (COTS) item, to disclose to the contractor in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Government.

Paragraph (d) of the FAR clause at 52.209–6 requires a corporate officer or designee of the contractor to notify the contracting officer, in writing, before entering into a subcontract (for other than COTS items) with a party that is debarred, suspended, or proposed for debarment. The written notice must include: The name of the subcontractor; why the subcontractor is debarred, suspended, or ineligible; the compelling reason(s) for doing business with the subcontractor; and how the contractor will protect the Government's interests when dealing with such subcontractor. For any subcontract subject to Government consent, contracting officers shall not consent to such subcontracts unless the agency head or a designee states in writing the compelling reasons for approving such subcontract.

4. FAR 52.209–7 and 52.209–9, Information Regarding Responsibility Matters and Updates to that Publicly Available Information. FAR provision 52.209–7, Information Regarding Responsibility Matters, requires each offeror to represent whether it has current active Federal contracts and grants with a total value greater than $10 million. The provision also requires each offeror to post in the Federal Awardee Performance and Integrity Information System (FAPIIS), as required by maintaining an active registration in the System for Award Management (SAM), information on whether the offeror and/or any of its principals has, or has not, within the past five years, in connection with the award to or performance by the offeror of a federal contract or grant, been the subject of a proceeding, at the Federal or State level, that resulted in:

(a) A criminal conviction in the case of a criminal proceeding;

(b) The finding of fault and liability in a civil proceeding resulting in the payment of $5,000 or more in damages, restitution, reimbursement, fine or penalty;

(c) The finding of fault and liability in an administrative proceeding resulting in the payment of a monetary fine or penalty of $5,000 or more, or the payment of a reimbursement, restitution, or damages in excess of $100,000; or

(d) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgement of fault by the contractor if the proceeding could have led to any of the outcomes specified in (4)(a) through (c) above.

Paragraph (a) of the FAR clause 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, requires contractors to update the information in FAPIIS on a semiannual basis, throughout the life of the contract, by posting the information in SAM. Paragraph (c) of the FAR clause 52.209–9 informs contractors of their ability to provide feedback on information posted by the Government in FAPIIS and the procedure to follow in the event information exempt from public disclosure is slated to become publicly available information in FAPIIS.

5. FAR 52.209–11, 52.209–12, and 52.212–3(q), Prohibition on Contracting With Corporations with Delinquent Taxes or a Felony Conviction. FAR provision 52.209–11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law, and its equivalent for commercial acquisitions at FAR 52.212–3(q), require offerors to represent whether the offeror is a corporation that—

- Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- Was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

FAR provision 52.209–12, Certification Regarding Tax Matters, require offerors proposing a total contract price that will exceed $5.5 million (including options) to certify that, to the best of the offeror's knowledge and belief, it—

- Has filed all Federal tax returns required during the three years preceding the certification;
- Has not been convicted of a criminal offense under the Internal Revenue Code of 1986; and
- Has not, more than 90 days prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

6. FAR 52.209–13, Violations of Arms Control Treaties or Agreements with the United States. Unless the offeror is providing evidence of a waiver or determination in accordance with paragraph (b)(2) of the FAR provision at 52.209–13, Violation of Arms Control Treaties or Agreements—Certification, paragraph (b)(1) of the provision requires offerors to certify that—

- The offeror does not engage and has not engaged in any activity that contributed to or is a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a); and
- No entity owned or controlled by the offeror is an entity organized under the laws of such country, that engages or has engaged in any activity that contributed to or is a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the United States is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the United States is a participating state.

Contracting officers use the collected information described above to determine an offeror's responsibility for contract award.

C. Annual Burden

Respondents: 1,973,803.
Total Annual Responses: 2,177,511.
Total Burden Hours: 1,125,803. (589,703 reporting hours + 536,100 recordkeeping hours).

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by

calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0198, Certain Federal Acquisition Regulation Part 9 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–29702 Filed 12–16–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2024–0103; NIOSH 355]

Expansion of NIOSH B Reader Certification Eligibility; Request for Information

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The B Reader Program, administered by CDC's National Institute for Occupational Safety and Health (NIOSH), is seeking information from experts in occupational respiratory health surveillance and radiology, nurse practitioners, physician assistants, workers exposed to mineral dust and unions representing such workers, industry and other parties interested in allowing nurse practitioners and physician assistants to be eligible to take the NIOSH B Reader examination and become certified B Readers if they successfully pass the examination.

DATES: Comments must be received by March 17, 2025.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS C–34, 1090 Tusculum Avenue, Cincinnati, Ohio 45226–1998.

Instructions: All written submissions received in response to this document must include the agency name and docket number (CDC–2024–0103; NIOSH–355) for this activity. All relevant comments, including any personal information provided, will be posted without change to *https://www.regulations.gov.* Do not submit comments by email.

FOR FURTHER INFORMATION CONTACT: Laura E. Reynolds, NIOSH B Reader Program, Respiratory Health Division, 1095 Willowdale Road, MS HG900.2, Morgantown, WV 26505–2888; (304) 285–5853 (this is not a toll-free number); *lreynolds@cdc.gov.*

SUPPLEMENTARY INFORMATION: The NIOSH B Reader program, established in 42 CFR 37.52, certifies physicians as being able to apply the International Labour Organization (ILO) International Classification of Radiographs of Pneumoconioses in classifying posteroanterior chest radiographic images for the presence and severity of appearances of pneumoconiosis (a type of dust-induced lung disease). In the United States, B Readers classify chest radiographic images of workers participating in health surveillance programs.[1] These workers have jobs involving exposure to mineral dusts that can cause pneumoconiosis such as coal mine dust, crystalline silica, and asbestos.

B Readers participate in several types of activities involving classification of chest radiographs. Physicians who classify chest radiographs for certain Federal surveillance programs such as the NIOSH Coal Workers' Health Surveillance Program must be B Readers. Additionally, B Readers provide classifications for research purposes and for certain legal and administrative activities such as compensation programs.

Currently, only physicians licensed to practice medicine in the United States can serve as certified B Readers in the United States, and only after successfully completing the B Reader examination. The examination, developed by NIOSH in partnership with the American College of Radiology, is rigorous and tests physicians' ability to apply the ILO classification system. International physicians may also take the B Reader examination to document their ability to apply the ILO classification system, but those who pass the examination do not serve as certified B Readers in the United States.

As of October 2024, 184 U.S. physicians based in 35 States and 2 Territories are NIOSH-certified B Readers. NIOSH is interested in ensuring that B Readers are available to classify chest radiographs obtained in all states and territories. To meet this goal, NIOSH is requesting information from parties interested in allowing nurse practitioners and physician assistants to be eligible to take the NIOSH B Reader examination and become certified B Readers if they successfully pass the examination.

[1] *See https://www.cdc.gov/niosh/chestradiography/php/breader/.*

NIOSH is particularly interested in receiving information about the following questions:

1. What is the current demand for B Readers, and would expanding the program to include nurse practitioners and physician assistants help meet this demand?

2. Are there specific geographic areas or populations that might benefit from having nurse practitioners and physician assistants certified as B Readers?

3. Are there any potential risks associated with expanding the B Reader certification to nurse practitioners and physician assistants and, if so, how can those risks be mitigated?

4. ILO classification of chest radiographs is not the same as clinical interpretation. Are there states where scope of practice and standards of care allow nurse practitioners and physician assistants to perform clinical interpretation of chest radiographs without physician oversight? In states where physician oversight is required for clinical interpretation, is it also required for ILO classification? What would be the best approach to ensuring that appropriate clinical interpretations are obtained for all contemporary chest radiographs undergoing ILO classification by nurse practitioners and physician assistants?

5. How do you anticipate different interested parties (*e.g.,* physicians, nurse practitioners and physician assistants, industry representatives, workers, health profession boards) would view the potential expansion of the B Reader program to include non-physicians?

6. What challenges might arise during the implementation of this expansion, and how could they be effectively managed?

7. Do you have any other information or comments relevant to whether nurse practitioners and physician assistants should be able to become B Readers and, if so, the best way to implement that expansion?

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

[FR Doc. 2024–29622 Filed 12–16–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Clinical Laboratory Improvement Advisory Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Clinical Laboratory Improvement Advisory Committee (CLIAC). CLIAC, consisting of up to 20 members including the Chair, represents a diverse membership across laboratory specialties, professional roles (laboratory management, technical specialists, physicians, nurses), and practice settings (academic, clinical, public health), and includes a consumer representative.

DATES: Nominations for membership on CLIAC must be received no later than July 1, 2025. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to *CLIAC@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Stang, M.S., Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Office of Laboratory Systems and Response, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–2, Atlanta, Georgia 30329–4027. Telephone: (404) 498–2769; Email: *HStang@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the objectives of the Clinical Laboratory Improvement Advisory Committee (CLIAC). Nominees will be selected based on expertise in the fields of microbiology (including bacteriology, mycobacteriology, mycology, parasitology, and virology), immunology (including histocompatibility), chemistry, hematology, pathology (including histopathology and cytology), or genetic testing (including cytogenetics); from representatives in the fields of medical technology, bioinformatics, public health, and clinical practice; and from consumer representatives. Selection of members is based on candidates' qualifications to contribute to the accomplishment of CLIAC objectives (*https://www.cdc.gov/cliac/php/about/index.html*). Members may be invited to serve up to four-year terms.

Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. The Centers for Disease Control and Prevention (CDC) reviews potential candidates for CLIAC membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, National Institutes of Health, Food and Drug Administration).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–29646 Filed 12–16–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

In accordance with 5 U.S.C. 1009(d), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463.

Name of Committee: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Dates: February 4–5, 2025.

Times: 11 a.m.–5 p.m., EST.

Place: Teleconference.

Agenda: The meeting will convene to address matters related to the conduct of Study Section business and for the Study Section to consider safety and occupational health-related grant applications.

For Further Information Contact: Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone: (304) 285–5951; Email: *MGoldcamp@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–29645 Filed 12–16–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10765]

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 18, 2025.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing*.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10765 Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Review Choice Demonstration for Inpatient Rehabilitation Facility (IRF) Services; *Use:* Section 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1(a)(1)(J)) authorizes the Secretary to ''develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act (the Act).'' Pursuant to this authority, the CMS will continue the implementation of a Medicare demonstration project, which CMS believes will help assist in developing improved procedures for the identification, investigation, and prosecution of Medicare fraud occurring among IRFs providing services to Medicare beneficiaries.

This demonstration will assist in developing improved procedures for the identification, investigation, and prosecution of potential Medicare fraud. The demonstration will ensure that payments for IRF services are appropriate through either pre-claim or postpayment review, thereby working towards the prevention and identification of potential fraud, waste, and abuse, as well as protecting the Medicare Trust Funds from improper payments while reducing Medicare appeals. CMS plans to continue the demonstration in Alabama and Pennsylvania, then expand to Texas, and California. After the initial four states, CMS will expand the demonstration to include the IRFs in any state that bill to Medicare Administrative Contractor (MAC) jurisdictions JJ, JL, JH, and JE. *Form Number:* CMS–10765 (OMB Control Number: 0938–1420); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits and Not-for-profits); *Number of Respondents:* 526; *Number of Responses:* 179,910; *Total Annual Hours:* 89,955. (For questions regarding this collection contact Jaclyn Gray (410) 786–3744.)

William N. Parham, III

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–29638 Filed 12–16–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2088–17]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; correction.

SUMMARY: On December 9, 2024, CMS published a notice in the **Federal Register** that sought comment on a collection of information concerning CMS–2088–17 (OMB control number 0938–0037) entitled ''Community Mental Health Center Cost Report.'' The OMB control number identifying the aforementioned information collection request is incorrectly listed in the **SUPPLEMENTARY INFORMATION** section of the notice. This document corrects the error.

FOR FURTHER INFORMATION CONTACT: William N. Parham, III, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

I. Background

In the December 9, 2024, issue of the **Federal Register** (89 FR 97619), we published a Paperwork Reduction Act notice requesting a 30-day public comment period for the information collection request identified under CMS–2088–17, OMB control number 0938–0037, and titled ''Community Mental Health Center Cost Report.''

II. Explanation of Error

In the December 9, 2024 (89 FR 97619) notice, the OMB control number is incorrect. The incorrect language is located on the 15th and 16th lines at the top of the middle column on page 97620, ''(OMB control number: 0938–0378)'' All of the other information contained in the December 9, 2024, notice is correct and remains unchanged. The related public comment period remains in effect and ends January 8, 2024.

III. Correction of Error

In FR Doc. 2024–28857 of December 9, 2024 (89 FR 97619), page 97620, in the 15th and 16th lines of the second column, ''(OMB control number: 0938–0378)'', is corrected to read as ''(OMB control number: 0938–0037)''.

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–29754 Filed 12–16–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Proposed Purchased/Referred Care Delivery Area Redesignation for the Chippewa Cree Tribe of the Rocky Boy's Reservation

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes to expand the geographic boundaries of the Purchased/Referred Care Delivery Area (PRCDA) for the Chippewa Cree Tribe of the Rocky Boy's Reservation (''Chippewa Cree Tribe'' or ''Tribe'') to include the Montana county of Cascade. The current PRCDA for the Chippewa Cree Tribe includes the Montana counties of Choteau, Hill and Liberty. Chippewa Cree Tribal members who reside outside of the PRCDA are eligible for direct care services; however, they are not eligible for Purchased/Referred Care (PRC) services. The sole purpose of this expansion would be to authorize additional Chippewa Cree Tribal members and beneficiaries to receive PRC services.

DATES: Comments must be submitted by January 16, 2025.

ADDRESSES: In commenting, please refer to file code [**Federal Register** insert file code number]. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a Comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Carl Mitchell, Director, Division of Regulatory and Policy Coordination, Indian Health Service, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the above address.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above.

If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with a staff member.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

FOR FURTHER INFORMATION CONTACT: CAPT John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, Maryland 20857. Telephone (301) 443–0969 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The IHS provides services under regulations in effect as of September 15, 1987, and republished at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a PRCDA, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the PRCDA. Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC services but only potential eligibility for services. Services needed, but not available at an IHS/Tribal facility, are provided under the PRC program depending on the availability of funds, the relative medical priority of the services to be provided, and the actual availability and accessibility of alternate resources in accordance with the regulations.

The regulations at 42 CFR part 136, subpart C provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation. 42 CFR 136.22(a)(6). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRCDA. 42 CFR 136.22(b). The regulations require that certain criteria

be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of PRC.

Additionally, the regulations require that any redesignation of a PRCDA be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). 42 CFR 136.22(c). In compliance with this requirement, the IHS is publishing this Notice and requesting public comments.

The Chippewa Cree Tribe of the Rocky Boy's Reservation is located Hill and Choteau Counties of Montana. The Chippewa Cree Tribe operates their PRC program under an Indian Self-Determination and Education Assistance Act agreement with the IHS. The Chippewa Cree Tribe has requested that the IHS expand its PRCDA to include Cascade County, Montana. The requested PRCDA redesignation would share Cascade County with the PRCDA of the Little Shell Tribe of Chippewa Indians of Montana (''Little Shell Tribe''). The Billings Area held discussions with the Little Shell Tribe, during which the Little Shell Tribe did not raise any objections to the expansion of the Chippewa Cree Tribe's PRCDA to include Cascade County. Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation, but reside within a PRCDA, must be either members of the Tribe or other IHS beneficiaries who maintain close economic and social ties with the Tribe. In this case, applying the aforementioned PRCDA redesignation criteria required by operative regulations codified at 42 CFR part 136, subpart C, the following findings are made:

1. By expanding the PRCDA to include Cascade County, Montana, the IHS and the Chippewa Cree Tribe estimate that the Tribe's PRC eligible population would increase by an estimated 251 Tribal members.

2. As part of their expansion request, the Chippewa Cree Tribe submitted a resolution from the Tribe's governing body. The resolution explains that the expansion is intended to serve their members living in Cascade County, Montana and it describes those members as being socially and economically tied to the Tribe's reservation. The IHS therefore finds that the Tribal members within the proposed, expanded PRCDA are socially and economically affiliated with the Chippewa Cree Tribe.

3. The expanded PRCDA county forms a contiguous area with the existing PRCDA. Members of the Chippewa Cree Tribe reside in the county proposed for inclusion in the expanded PRCDA. Through their expansion request, the Tribe described how close Cascade County, Montana is to their reservation and explained that it is close enough for their members residing there to return frequently to the Tribe's reservation for ceremony and participation in Tribal elections. For these reasons, the IHS has determined the additional county proposed for inclusion herein to be geographically proximate, meaning ''on or near,'' to the Tribe's reservation.

4. Through the Chippewa Cree Tribe's request to expand its PRCDA, the Tribe has indicated that the PRC program can continue providing the same level of care to the PRC eligible population if the PRCDA is expanded as proposed, without requiring additional funding from the IHS or reduction of the current medical priority level.

Accordingly, the IHS proposes to expand the PRCDA of the Chippewa Cree Tribe to include the county of Cascade in the state of Montana.

This Notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2024–29689 Filed 12–16–24; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of 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 held as a virtual meeting and will be open to the public as indicated below. Interested individuals should pre-register at *https://cvent.me/N0moVx* to attend this meeting. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *http://videocast.nih.gov/.*

Name of Committee: Scientific Management Review Board.

Date: January 10, 2025.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: Establish priorities and review prior recommendations and report.

Place: National Institutes of Health, One Center Drive, Building 1, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Tyrone Spady, Ph.D., Acting Senior Advisor to the NIH Deputy Director, Office of the Director, One Center Drive, Building 1, Room 108, Bethesda, MD 20892, (301) 496–2433, *smrb@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

The draft meeting agenda and other information about the SMRB, including information about access to the webcast, will be available prior to the meeting at *http://smrb.od.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Numbers: 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS.)

Dated: December 12, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29701 Filed 12–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–NIAID–SBIR PHS 2025–1 Phase 1 and Fast Track: New Drug Classes with Novel Mechanisms of Action for HIV, Hepatitis B, and Tuberculosis (Topic 137).

Date: January 17–24, 2025.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Barry J. Margulies, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892, (301) 761–7956, *barry.margulies@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 11, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29602 Filed 12–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://videocast.nih.gov/watch=55443*).

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 intramural programs and projects as well as the grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: February 21, 2025.

Open: 8:30 a.m. to 2:30 p.m.

Agenda: Presentation of the NEI Director's report, discussion of NEI programs, and concept clearances.

Address: National Eye Institute, 1st Floor, Room A/B/C, 6700B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Closed: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Address: National Eye Institute, 1st Floor, Room A/B/C, 6700B Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Kathleen C. Anderson, Ph.D., Director, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3440, Bethesda, MD 20892, (301) 827–4320, *kanders1@nei.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the contact person listed above before the meeting or within 15 days after the meeting. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: December 12, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–29700 Filed 12–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0782]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0120

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0120, U.S. Coast Guard Non-Appropriated Fund Employment Application; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before January 16, 2025.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2024–0782]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request For Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0782, and must be received by January 16, 2025.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0120

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 76486, September 18, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: U.S. Coast Guard Non-Appropriated Fund Employment Application.

OMB Control Number: 1625–0120.

Summary: The USCG Non-Appropriated Fund Employment Application form is used to collect applicant qualification information associated with vacancy announcements. The form allows individuals to apply for employment opportunities with the Coast Guard Non-appropriated fund (NAF) workforce and fills the gap created by the cancellation of the Optional Application for Federal Employment, Form OF–612, OMB No. 3206–0219.

Need: The U.S. Coast Guard rates applicants under the authority of 5 U.S.C. 301, 1104, 1302, 3301, and 3304. The Optional Application for Federal Employment, Form OF–612, was cancelled and the information is now collected in USA Jobs. The NAF personnel system does not utilize USA Jobs because of the high cost and high turnover rate and thus relied heavily on form OF–612 for applicants.

Forms: CG–1227B, Non-Appropriated Fund Employment Application.

Respondents: Public applying for positions with the USCG Non-appropriated fund workforce.

Frequency: Per vacancy announcements.

Hour Burden Estimate: The estimated burden remains 4,333 a year. The reporting requirements and the methodology for calculating burden, remain unchanged.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: December 12, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–29797 Filed 12–16–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0067]

Agency Information Collection Activities; Extension; Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 18, 2025) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0067 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis

Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions.

OMB Number: 1651–0067.

Form Number: N/A.

Current Actions: This submission will extend the expiration date without a change to the information collected or method of collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: U.S. Customs and Border Protection (CBP) is responsible for determining whether imported articles that are classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 9801.00.10, 9802.00.20, 9802.00.40, 9802.00.50, 9802.00.60 and 9817.00.40 are entitled to duty-free or reduced duty treatment. In order to file under these HTSUS provisions, importers, or their agents, must have the declarations that are provided for in 19 CFR 10.1(a), 10.8(a), 10.9(a) and 10.121 in their possession at the time of entry and submit them to CBP upon request. These declarations enable CBP to ascertain whether the requirements of these HTSUS provisions have been satisfied.

These requirements apply to the trade community who are familiar with CBP regulations and the tariff schedules.

Type of Information Collection: Declarations under Chapter 98.

Estimated Number of Respondents: 19,445.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 58,335.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 972.

Dated: December 12, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–29698 Filed 12–16–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0011]

Agency Information Collection Activities; Extension; Declaration for Free Entry of Returned American Products (CBP Form 3311)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 18, 2025) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0011 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration for Free Entry of Returned American Products.

OMB Number: 1651–0011.

Form Number: 3311.

Current Actions: This submission will extend the expiration date without a change to the information collected or method of collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 3311, Declaration for Free Entry of Returned American Products, which is authorized by, among others, 19 CFR 10.1, 10.66, 10.67, 12.41, 123.4, and 143.23, is used to collect information from the importer or authorized agent in order to claim duty-free treatment for articles entered under certain provisions of Subchapter I of Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS, *https://hts.usitc.gov/current*). The form serves as a declaration that the articles are: (1) the growth, production, and manufacture of the United States; (2) are returned to the United States without having been advanced in value or improved in condition while abroad; (3) the goods were not previously entered under a temporary importation under bond provision; and (4) drawback was never claimed and/or paid.

This collection of information applies to members of the importing public and trade community who seek to claim duty-free treatment based on compliance with the aforementioned requirements. These members of the public and trade community are familiar with import procedures and with CBP regulations. Obligation to respond to this information collection is required to obtain benefits.

Type of Information Collection: Form 3311.

Estimated Number of Respondents: 12,000.

Estimated Number of Annual Responses per Respondent: 35.

Estimated Number of Total Annual Responses: 420,000.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 42,000.

Dated: December 12, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–29697 Filed 12–16–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Sensitive Security Information Threat Assessment Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0042, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves TSA determining whether individuals seeking access to sensitive security information (SSI) may be granted access to the SSI.

DATES: Send your comments by January 16, 2025. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 24, 2024, 89 FR 77883. TSA did not receive any comments on the notice.

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 is 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

Title: Sensitive Security Information Threat Assessment Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0042.

Forms(s): TSA Forms 2817A and 2817B.

Affected Public: Individuals seeking access to SSI Information.

Abstract: TSA is required to prohibit the disclosure of information that would be detrimental to transportation safety or security. *See* 49 U.S.C. 114(r) and 44912(d). *See also* TSA's regulations stipulating requirements for the protection of SSI at 49 CFR part 1520. The regulations restrict access to SSI to ''covered individuals'' with a ''need to know''.

Pursuant to the requirements in Section 525(d) of the DHS Appropriations Act, 2007, Public Law 109–295 (120 Stat 1355, 1382, Oct. 4, 2006), as reenacted,[1] TSA must establish a process by which a party seeking access to SSI in a civil proceeding in federal district court can make a request to receive a record designated as SSI. TSA's process applies to parties who demonstrate a substantial need for relevant SSI in preparation of the party's case and not having the record would create an undue hardship to obtain the substantial equivalent of the information by other means.[2] Under

[1] Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, Div. D., Title V., sec. 510 (March 26, 2013).

[2] That in civil proceedings in the United States District Courts, where a party seeking access to SSI demonstrates that the party has substantial need of relevant SSI in the preparation of the party's case and that the party is unable without undue

Continued

this process, the party's representative may request and be granted conditional access to the SSI at issue in the case. TSA may grant court reporters and experts access to the SSI under similar terms and conditions.

Under 49 CFR 1520.11 and 1520.15, TSA may also consider individuals who are (1) prospective bidders to a Request for Proposal; (2) involved in the performance of non-traditional contractual agreements (*e.g.,* bailments) or other transaction agreements; or (3) receiving access to SSI as a conditional disclosure under 49 CFR 1520.15(e) in this process.

Under 49 CFR 1520.11(c), TSA may make an individual's access to SSI contingent upon satisfactory completion of a security threat assessment (STA), including evaluation of a fingerprint-based criminal history records check (CHRC); and/or a name-based check against federal law enforcement, terrorism, and immigration databases; and/or other procedures and requirements for safeguarding SSI that are satisfactory to TSA. *See also* 49 U.S.C. 114(f)(4). To conduct this STA, TSA collects identifying information, an explanation supporting the individuals' need for the information, and other information related to safeguarding SSI to conduct the STAs. For individuals who have received a comparable STA from TSA (such as being a member of the TSA PreCheck® Application Program), TSA may also use the known traveler number issued by TSA to inform an individual's eligibility to access SSI, or otherwise honor the comparable STA. TSA uses the results of the STA to make a final determination on whether the individual may be granted access to SSI. TSA also uses the information as part of its determination as to whether provision of access to specific SSI would present a risk of harm to the nation.

In addition, TSA uses the information from individuals who have recently (*i.e.,* within 2 years or as determined appropriate by the program office) successfully undergone a federal background investigation (*i.e.,* Tier 1) or hold an active security clearance granting access to classified national security information to facilitate the STA. TSA will use this information as part of its determination as to whether provision of access to specific SSI would be detrimental to transportation security.

Applicants seeking access to SSI in federal district court litigation must complete TSA Form 2817A, *SSI Access Threat Assessment Questionnaire—Litigation.* Bidders and certain other applicants are required to complete TSA Form 2817B, *SSI Access Threat Assessment Questionnaire—Standard* in order to have a STA completed before they can receive the requested SSI. The data points consist of identifying information, including, but not limited to, full name (including any aliases), date of birth, place of birth, gender, Social Security number (optional), employer name (optional); country of citizenship, Known Traveler Number (if using TSA PreCheck as a comparable STA), level and date of security clearance (if available), and information regarding the need for the information (litigant, bidder, *etc.*).

In addition to the information required for conducting STAs, TSA requires contract bidders to provide a certification from each company/entity that its employees/personnel who are provided access to SSI are properly trained; a Non-Disclosure Agreement for each individual who is granted access to SSI; and an affirmation that each company/entity will designate a senior official who can certify that all appropriate protections will be followed, only authorized individuals will have access to the sensitive information, and that those individuals adequately understand their responsibilities to protect the information. TSA may also require these items for other contractual agreements (*e.g.,* bailments), other transaction agreements, or conditional SSI disclosures, on a case-by-case basis.

In the case of a party seeking access to SSI in a civil proceeding in federal court, TSA will gather the information required for individual vetting, including fingerprinting to conduct a CHRC and also require these individuals to respond to questions to verify individuals' history in safeguarding sensitive information, including good standing with bar membership or sanctions; and to agree to abide by TSA instructions concerning the handling of SSI in connection with the court proceeding.

Estimated Number of Respondents: 263.

Estimated Annual Burden Hours: 104.53.[3]

Dated: December 11, 2024.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–29661 Filed 12–16–24; 8:45 am]

BILLING CODE 9110–05–P

hardship to obtain the substantial equivalent of the information by other means, the party or party's counsel shall be designated as a covered person under 49 CFR part 1520.7 in order to have access to the SSI at issue in the case, provided that the overseeing judge enters an order that protects the SSI from unauthorized or unnecessary disclosure and specifies the terms and conditions of access, unless upon completion of a criminal history check and terrorist assessment like that done for aviation workers on the persons seeking access to SSI, or based on the sensitivity of the information, the Transportation Security Administration or DHS demonstrates that such access to the information for the proceeding presents a risk of harm to the nation: Provided, That notwithstanding any other provision of law, an order granting access to SSI under this section shall be immediately appealable to the United States Courts of Appeals, which shall have plenary review over both the evidentiary finding and the sufficiency of the order specifying the terms and conditions of access to the SSI in question: Provided further, That notwithstanding any other provision of law, the Secretary may assess a civil penalty of up to $50,000 for each violation of 49 CFR part 1520 by persons provided access to SSI under this provision.

[3] Since the publication of the 60-day notice, TSA has adjusted the hour burden from 275 hours to 104.53 hours.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2024–N064; FXES11130800000–245–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct scientific research to promote conservation or other activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before January 16, 2025.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* XXXXXX or PER0001234).

- *Email: permitsR8ES@fws.gov.*
- *U.S. Mail:* Tiffany Heitz, Regional Recovery Permit Coordinator, U.S. Fish

and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Tiffany Heitz, via phone at 916–414–6489, or via email at *permitsR8ES@fws.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the permit requests in table 1 are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

TABLE 1—PERMIT APPLICATIONS RECEIVED

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
PER10235675	Alex Hirth, Berkeley, California.	• California tiger salamander (*Ambystoma californiense*) Santa Barbara County and Sonoma County distinct population segments.	CA	Survey, capture, handle, swab, and release.	New.
843381	Sonoma-Mendocino Coast District State Park, Mendocino, California.	• Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*).	CA	Pursue and conduct habitat restoration	Amend.
PER11848759	Kelsea Loescher, San Marcos, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect resting eggs.	New.
205609	Lawrence Kobernus, San Francisco, California.	• California tiger salamander (*Ambystoma californiense*) Sonoma County distinct population segment. • San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).	CA	Survey, capture, handle, swab, and release.	Renew.
094318	Jessica Vinje, Escondido, California.	• Orcutt's spineflower (*Chorizanthe orcuttiana*). • Salt marsh bird's-beak (*Cordylanthus maritimus maritimus*).. • Willowy monardella (*Monardella viminea*).	CA	Collect	Renew.
027422	Brian T. Pittman. Rohnert Park, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • California tiger salamander (*Ambystoma californiense*) Sonoma County distinct population segment. • San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).	CA	Survey, capture, handle, swab, release, collect adult vouchers, and collect resting eggs.	Renew.

TABLE 1—PERMIT APPLICATIONS RECEIVED—Continued

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
041668	Cleveland National Forest, San Diego, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*). • Arroyo toad (*Anaxyrus californicus*) • San Diego button-celery (*Eryngium aristulatum* var. *parishii*). • Nevin's barberry (*Berberis nevenii*) • Slender-horned spineflower (*Dodecahema leptoceras*). • San Bernardino bluegrass (*Poa atropurpurea*). • Braunton's milk-vetch (*Astragalus brauntonii*). • Munz's onion (*Allium munzii*)	CA	Survey, capture, handle, swab, release, and collect.	Renew and amend.
PER12435078	Cailan Patel, Concord, California.	• Foothill yellow-legged frog (*Rana boylii*) South Sierra and South Coast distinct population segments.	CA	Survey, capture, handle, swab, and release.	New.
PER4775159	Andrew Kort, La Mesa, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*).	CA	Pursue	New.
32232D	Sara Snyder, Grover Beach, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, and collect adult vouchers.	Renew.
PER12736199	Stephen L Peterson, Grover Beach, California.	• California tiger salamander (*Ambystoma californiense*) Santa Barbara County and Sonoma County distinct population segments.	CA	Survey, capture, handle, swab, and release.	New.
027427	Jeff Alvarez, Sacramento, California.	• California tiger salamander (*Ambystoma californiense*) Santa Barbara County and Sonoma County distinct population segments. • Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Foothill yellow-legged frog (*Rana boylii*), South Sierra and South Coast distinct population segments.	CA	Survey, capture, handle, swab, and release.	Renew and amend.
808241	Sonoma County Water Agency, Santa Rosa, California.	• California tiger salamander (*Ambystoma californiense*) Santa Barbara County and Sonoma County distinct population segments. • California freshwater shrimp (*Syncaris pacifica*).	CA	Survey, capture, handle, swab, and release.	Renew.
30023C	Joshua Zinn, La Mesa, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect resting eggs.	Renew.
102310	Mitchell Dallas, Morro Bay, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, collect and hydrate resting eggs.	Renew.
29522A	Kenneth Gilliland, Ventura, California.	• California tiger salamander (*Ambystoma californiense*) Santa Barbara County distinct population segment.	CA	Collect tail clips for genetic samples	Amend.

TABLE 1—PERMIT APPLICATIONS RECEIVED—Continued

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
217402	Julie Love, Santa Barbara, California.	• Tidewater goby (*Eucyclogobius newberryi*).	CA	Survey, capture, handle, photograph (as vouchering tool), release, and collect voucher specimens.	Renew.
217401	Cristina Slaughter, Santa Ynez, California.	• Tidewater goby (*Eucyclogobius newberryi*).	CA	Survey, capture, handle, and release	Renew.
797999	Merkel & Associates, Inc., San Diego, California.	• Tidewater goby (*Eucyclogobius newberryi*). • Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Quino checkerspot butterfly (*Euphydryas editha quino*). • Light-footed Ridway's rail (*Rallus longirostris levipes*). • Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*). • Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Survey, pursue, capture, handle, release, collect adult vouchers, and collect resting eggs.	Renew.
13639B	Anastasia Ennis, San Francisco, California.	• Salt marsh harvest mouse (*Reithrodontomys raviventris*). • California Ridway's rail (*Rallus longirostris obsoletus*).	CA	Survey, capture, handle, mark, take hair and tissue samples, and release.	Renew and amend.
PER13461767	Port of Los Angeles, San Pedro, California.	• California least tern (*Sterna antillarum browni*).	CA	Survey, locate and monitor nests, and mark nests.	New.
68599D	San Diego Zoo Wildlife Alliance, San Diego, California.	• Laguna Mountains skipper (*Pyrgus ruralis lagunae*).	CA	Release all life stages	Amend.
PER0002928	Fresno Chaffee Zoo, Fresno, California.	• Blunt-nosed leopard lizard (*Gambelia silus*).	CA	Survey, capture, handle, and release	Amend.
08087D	Jonathan Walker, San Diego, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*). • Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, pursue, capture, handle, release, collect adult vouchers, and collect resting eggs.	Renew.
42300D	Kelli Camara, Soquel, California.	• Foothill yellow-legged frog (*Rana boylii*), South Coast distinct population segment. • Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*).	CA	Survey, capture, handle, swab, release, rescue, and relocate.	Renew and amend.
PER13593542	Brian Nissen, San Ramon, California.	• California tiger salamander (*Ambystoma californiense*) Santa Barbara County distinct population segment.	CA	Survey, capture, handle, swab, and release.	New.
31349D	University of California, Santa Barbara, California.	• Mountain yellow-legged frog (*Rana mucosa*), Southern California distinct population segment. • Mountain yellow-legged frog (*Rana mucosa*), Northern California distinct population segment. • Sierra Nevada yellow-legged frog (*Rana sierrae*). • Arroyo toad (*Anaxyrus californicus*)	CA	Survey, capture, handle, swab, collect mucosome samples, clip toes, and release; and collect tadpole specimens.	Renew and amend.
788133	Vincent Scheidt, San Diego, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*).	CA	Survey, pursue, capture, handle, and release.	Renew.
817397	John Storrer, Santa Barbara, California.	• California tiger salamander (*Ambystoma californiense*) Santa Barbara County and Sonoma County distinct population segments.	CA	Survey, capture, handle, collect tissue samples, collect voucher specimens, and release.	Renew.
135948	Natalie Brodie, San Diego, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*).	CA	Survey, pursue, capture, handle, and release.	Renew.

TABLE 1—PERMIT APPLICATIONS RECEIVED—Continued

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
134338	Brenna Ogg, San Diego, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*). • Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, pursue, capture, handle, release, collect adult vouchers, and collect resting eggs.	Renew and amend.
62708B	Mary Halterman, Onyx, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Survey	Renew.
036499	National Park Service—Golden Gate National Recreation Area, San Francisco, California.	• San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).	CA	Survey, capture, handle, temporarily hold in captivity, transport, mark, conduct telemetry, collect biological samples, and release.	Amend.
92167B	San Francisco Zoological Society, San Francisco, California.	• Foothill yellow-legged frog (*Rana boylii*), South Coast and South Sierra distinct population segments. • San Francisco garter snake (*Thamnophis sirtalis tetrataenia*). • California tiger salamander (*Ambystoma californiense*) Santa Barbara County and Sonoma County distinct population segments.	CA, NV	Transport, captive-rear, provide veterinary treatment and husbandry, take biological samples, mark, provide disease treatment and immunization, hold for educational display, release, sacrifice, and necropsy.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Angela Picco,

Regional Threatened and Endangered Species Lead, Ecological Services, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2024–29643 Filed 12–16–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2024–0189; FXES11140400000–256–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from RWLC Development Sub, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and bluetail mole skink (skinks) incidental to the construction of a commercial development in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before January 16, 2025.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R4–ES–2024–0189 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- Online: *https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2024–0189; or
- U.S. mail: Public Comments Processing, Attn: Docket No. FWS–R4–ES–2024–0189; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, by U.S. mail (see **ADDRESSES**), by telephone at 904–404–2464, or via email at *erin_gawera@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States

should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from RWLC Development Sub, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take federally listed sand skinks (*Neoseps reynoldsi*) and bluetail mole skinks (*Eumeces egregius lividus*) (skinks), federally listed as threatened under the ESA, incidental to the construction and operation of a commercial development in Polk County, Florida. We request public comments on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as ''low effect,'' and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 1.68 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a commercial development on 12.64 ac on Parcel #: 27–26–29–706500–030310 and 27–26–29–706500–030300 in Section 29, Township 26 S, Range 27 E, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 3.36 ac of skink-occupied habitat within the Lake Wales Ridge Conservation Bank or another Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any phase of the project.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project—including the construction of the buildings and associated infrastructure (*e.g.,* electric, water, and sewer lines)—would individually and cumulatively have a minor or negligible effect on the skinks and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the skinks and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or negligible effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER13163374 to RWLC Development Sub, LLC.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508 and 43 CFR part 46).

Robert L. Carey,

Manager, Division of Environmental Review, Florida Ecological Services Field Office.

[FR Doc. 2024–29656 Filed 12–16–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Wyoming Resource Advisory Council Announces 2025 Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Wyoming Resource Advisory Council (RAC) is announcing its 2025 meeting dates.

DATES: The Wyoming RAC will meet as follows:

- January 29, 2025, in-person and virtually, from 8:30 a.m. to 4:30 p.m. MT. A speaker presentation will be held January 30, 2025, beginning at 8:30 a.m.;
- April 23, 2025, in-person and virtually, from 8:30 a.m. to 4:30 p.m. MT. A field tour will be held April 24, 2025, beginning at 8:30 a.m.;
- July 9, in-person and virtually, from 8:30 a.m. to 4:30 p.m. MT. A field tour will be held July 10, 2025, beginning at 8:30 a.m.;
- October 21, in-person and virtually, from 8:30 a.m. to 4:30 p.m. MT. A field tour will be held October 22, 2025, beginning at 8:30 a.m.

All meetings and field tours are open to the public. The public is responsible for their own transportation on field tours and to meetings.

ADDRESSES: The January 29 meeting will be held at the BLM Wyoming State Office at 5353 Yellowstone Road, Cheyenne, WY 82009, as well as virtually through the Zoom platform.

The April 23 meeting will be held at a determined Wyoming Field Office, as well as virtually through the Zoom platform.

The July 9 meeting will be held at a determined Wyoming Field Office, as well as virtually through the Zoom platform.

The October 21 meeting will be held at a determined Wyoming Field Office, as well as virtually through the Zoom platform.

Virtual registration information and the agenda for all meetings will be available 2 weeks in advance of the meetings on the Council's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/wyoming.*

FOR FURTHER INFORMATION CONTACT: Allegra Keenoo, BLM Wyoming State Office, telephone: (307) 775–6318, email: *akeenoo@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 Allegra Keenoo. 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 10-member RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public land challenges within the State of Wyoming.

Each meeting may include field office updates and a time reserved for open discussion, followed by a public comment period. Depending on the number of people who wish to speak, the time for individual comments may be limited.

Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**) 2 weeks in advance of the meeting.

Written comments for the Council may be sent electronically in advance of the scheduled meetings to Public Affairs Specialist Allegra Keenoo at *akeenoo@blm.gov,* or in writing to BLM Wyoming Public Affairs, 5353 Yellowstone Rd. Cheyenne, WY 82009. All comments received will be provided to the Council. Please include ''RAC Comment'' in your submission. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Detailed minutes for RAC meetings will be maintained in the BLM Wyoming State Office and will be available for public inspection within 90 days following the meeting. Previous minutes and agendas are also available on the RAC's web page listed in the **ADDRESSES** section of this notice.

(Authority: 43 CFR 1784.4–2)

Andrew Archuleta,

BLM Wyoming State Director.

[FR Doc. 2024–29655 Filed 12–16–24; 8:45 am]

BILLING CODE 4331–26–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Public Meeting for the Missouri Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Missouri Basin Resource Advisory Council (RAC) will meet as follows.

DATES: The RAC will meet virtually on January 16, 2025, from 8 a.m. to 5 p.m. Mountain Time.

ADDRESSES: The meeting will be held virtually. The meeting will be open to the public. Attendees must register with the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least 7 business days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Gina Baltrusch, Missouri Basin RAC Coordinator, BLM North Central Montana District, 1220 38th Street North Great Falls, MT 59405; telephone: 406–308–9387; email: *rbaltrusch@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 council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central and Eastern Montana, and North and South Dakota. Agenda topics will include North-Central Montana and Eastern Montana/Dakotas district reports, Field Office manager reports, review of Recreation Site Business Plans, a public comment period, and other topics the council may wish to cover. A final agenda will be posted on the RAC's web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/montana-dakotas/missouri-basin-rac* two weeks in advance of the meeting. Written comments to the RAC can be emailed in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personally identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally 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.

(Authority: 43 CFR 1784.4–2).

Wendy Warren,

Eastern Montana/Dakotas District Manager and Missouri Basin RAC Designated Federal Official.

[FR Doc. 2024–29658 Filed 12–16–24; 8:45 am]

BILLING CODE 4331–20–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–447 and 731–TA–1116 (Third Review)]

Circular Welded Carbon-Quality Steel Pipe From China

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty and antidumping duty orders on circular welded carbon-quality steel pipe from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on May 1, 2024 (89 FR 35244) and determined on August 5, 2024, that it would conduct expedited reviews (89 FR 77543, September 23, 2024).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on December 12, 2024. The views of the Commission are contained in USITC Publication 5571 (December 2024), entitled *Circular Welded Carbon-Quality Steel Pipe from China: Investigation Nos. 701–TA–447 and 731–TA–1116 (Third Review).*

By order of the Commission.

Issued: December 12, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–29686 Filed 12–16–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–699–700 and 702 and 731–TA–1660 (Final)]

Frozen Warmwater Shrimp From Ecuador, India, Indonesia, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of frozen warmwater shrimp from Indonesia, provided for in subheadings 0306.17.00, 1605.21.10, and 1605.29.10 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and imports of frozen warmwater shrimp from Ecuador, India, and Vietnam that have been found by Commerce to be subsidized by the governments of Ecuador, India, and Vietnam.[2]

Background

The Commission instituted these investigations effective October 25, 2023, following receipt of petitions filed with the Commission and Commerce by the American Shrimp Processors Association, Port Arthur, Texas. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of frozen warmwater shrimp from Ecuador, India, and Vietnam were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and imports of frozen warmwater shrimp from Indonesia were sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)).[3] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 26, 2024 (89 FR 53444). The Commission conducted its hearing on October 22, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on December 12, 2024. The views of the Commission are contained in USITC Publication 5566 (December 2024), entitled *Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam: Investigation Nos. 701–TA–699–700 and 702 and 731–TA–1660 (Final).*

By order of the Commission.

Issued: December 12, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–29730 Filed 12–16–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On December 9, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Middle District of Tennessee in the lawsuit entitled *United States* v. *Diesel Performance Parts, Inc.,* Civil Action No. 3:24–cv–01439.

The proposed Consent Decree settles claims brought by the United States for violations of section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7522(a)(3)(B), arising from Defendant's offers for sale and sale of motor vehicle parts that bypass, defeat, and/or render inoperative the vehicle's installed emission controls, commonly known as ''defeat devices.'' The Consent Decree resolves these claims and prohibits Defendant and its owner (collectively, ''the DPPI Parties'') from: (1) manufacturing, selling, or installing defeat devices; (2) investing in or obtaining revenue from defeat devices, including from other companies or ventures; and (3) providing technical support or honoring warranty claims for defeat device products. In addition, the Consent Decree requires the DPPI Parties to destroy any remaining defeat devices in their inventory or possession, surrender all intellectual property associated with defeat devices to EPA, and report periodically on their compliance with the Consent Decree. It also requires the DPPI Parties to pay a civil penalty of $320,000, based on their limited ability to pay.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Diesel Performance Parts, Inc.,* D.J. Ref. No.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 85498, 89 FR 85506, 89 FR 85502, and 89 FR 85500 (October 28, 2024).

[3] Commerce published notices in the **Federal Register** of a negative final countervailing duty determination in connection with the subject investigation concerning Indonesia and of a negative final determination of sales at less than fair value in connection with the subject investigation concerning Ecuador (89 FR 85512 and 89 FR 85508, October 28, 2024). Accordingly, effective October 28, 2024, the Commission terminated its countervailing duty investigation concerning imports of frozen warmwater shrimp from Indonesia and its antidumping duty investigation concerning imports of frozen warmwater shrimp from Ecuador (89 FR 88061, November 6, 2024).

90–5–2–1–12539. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Scott Bauer,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–29662 Filed 12–16–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0243]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection: Grants Management System (JustGrants System)

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 18, 2025.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jennifer Tyson (202) 598–0386, Deputy Director, Office of Audit, Assessment, and Management, Office of Justice Programs, Department of Justice, 999 North Capitol St. NE, Washington, DC 20531.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection

1. *Type of Information Collection:* Extension without change of a currently approved collection; non-substantive name change.

2. *The Title of the Form/Collection:* The existing title is the Community Partnership Grants Management System. Going forward, this collection will be referred to as the JustGrants System collection. The JustGrants System is the successor system to the Community Partnership Grants Management System, and encompasses and replaces the functionality of the latter.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* NA. The applicable component within the Department of Justice is Office of Audit, Assessment, and Management, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are state, local, and tribal governments, institutions of higher education, non-profit organizations, and other organizations applying for DOJ grants. JustGrants is a web-based grants applications system and award management system. It provides automated support throughout the award lifecycle, and facilitates reporting to Congress and other interested agencies. The system stores essential information required to comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA). JustGrants has also been designated the OJP official system of record for grants activities by the National Archives and Records Administration (NARA).

5. *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* An estimated 18,793 organizations will respond to the collections under JustGrants and on average it will take each of them from 1 to 11 hours to complete various award lifecycle processes within the system, varying from application submission, award management and reporting, and award closeout (a total average of 41.50 hours for all processes).

6. *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 381,644 hours.

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: December 12, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–29728 Filed 12–16–24; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Resource Justification Model

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 16, 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: Using the Resource Justification Model (RJM), state agencies electronically submit detailed cost data in a structured format (spreadsheet file). The information specifies salary and benefit rates, workloads, processing times, and non-personal services dollars, which are used to inform ETA's administrative funding allocation process. Review and validation of the data by ETA Regional Offices is also an important part of the RJM. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 3, 2024 (89 FR 36833).

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: Resource Justification Model.

OMB Control Number: 1205–0430.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Number of Responses: 159.

Total Estimated Annual Time Burden: 5,380 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. 2024–29825 Filed 12–16–24; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold three meetings, by video conference, of the Humanities Panel, a federal advisory committee, during January 2025. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given of the following meetings:

1. Date: January 13, 2025

This meeting will discuss applications on the topics of Arts, Literature, Media, and Religious Studies, for the Kluge Fellowships grant program, submitted to the Library of Congress.

2. Date: January 14, 2025

This meeting will discuss applications on the topics of History, Jurisprudence, and Social Sciences, for the Kluge Fellowships grant program, submitted to the Library of Congress.

3. Date: January 15, 2025

This meeting will discuss applications on the topic of History, for the Kluge Fellowships grant program, submitted to the Library of Congress.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: December 12, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–29703 Filed 12–16–24; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 603–292–4479; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION:

On July 05, 2024, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Heather Liwanag, Permit No. 2025–004, August 15, 2024

2. Zheng Wang, Permit No. 2025–005, August 16, 2024
3. Paul Ponganis, Permit No. 2025–006, August 16, 2024

On July 26, 2024, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Ethan Norris, ASC, Permit No. 2025–008, September 26, 2024
2. Jason Flesher, SCENIC, Permit No. 2025–007, September 25, 2024

On August 5, 2024, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Chris Linder, Permit No. 2025–009, September 26, 2024
2. Dan Costa, Permit No. 2025–010, September 27, 2024

On September 12, 2024, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Robin West, Seabourn, Permit No. 2025–011, October 25, 2024
2. Heather Lynch, Permit No. 2025–013, November 22, 2024
3. Heather Lynch, Permit No. 2025–012, November 11, 2024

On September 30, 2024, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Dale Andersen, Permit No. 2025–014, November 27, 2024

On October 31, 2024, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on the following dates:

1. Ari Friedlaender, Permit No. 2025–019, December 1, 2024
2. Ari Friedlaender, Permit No. 2025–020, December 1, 2024
3. Sujatha Bagal, NGS, Permit No. 2025–021, December 9, 2024

Alina Pavao,

Administrative Assistant, Office of Polar Programs.

[FR Doc. 2024–29649 Filed 12–16–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 16, 2025. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–4479; or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2025–019) to Ari Friedlaender on December 1, 2024. The issued permit allows for Take, Harmful interference, and Import into USA associated with research activities on the ecology of cetaceans in the Antarctic Peninsula. The permitted activities include the use of Remotely Piloted Aircraft Systems (RPAS), deployment of tags to collect spatial and behavioral information, collection of biopsies, and conducting behavioral observations.

Now the holder proposes a modification to the permit to access Antarctic Specially Protected Area 113, Litchfield Island in order to collect aerial footage using RPAS as part of a collaborate effort with activities by Natasja van Gestel conducted under permit ACA 2023–007. Footage would be used for outreach purposes to highlight the importance of plant covered land in Antarctica. The collaboration proposes to allow RPAS filming under this permit (2025–019) as the holder is experienced in operating RPAS at this location without disturbance to wildlife. A total of three flights would be conducted over a three day period with flights above 40 meters AGL.

Location: ASPA 113, LITCHFIELD ISLAND.

Dates: January 12, 2024 to January 31, 2024.

Alina Pavao,

Administrative Assistant, Office of Polar Programs.

[FR Doc. 2024–29650 Filed 12–16–24; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Thursday, December 19, 2024.

PLACE: via ZOOM.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in her opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) permit closure of the following portion(s) of this meeting:

- Executive (Closed) Session

Agenda

I. Call to Order
II. Sunshine Act Approval of Executive (Closed) Session
III. Executive Session: CEO Report
IV. Executive Session: CFO Report
V. Executive Session: General Counsel Report
VI. Executive Session: CIO Report
VII. Executive Session: Officer Performance Metrics
VIII. Action Item: Approval of Meeting Minutes for August 13 Audit Committee Meeting, August 15 Regular Board Meeting, September 30 Special Board Meeting, October 16 Special Board Meeting, October 17 Regular Board Meeting, and November 7 Audit Committee Meeting
IX. Action Item: Approval of 2024 Delegation of Authority Revision
X. Action Item: Approval of FY2025–2027 Strategic Plan
XI. Discussion Item: November 7 Audit Committee Meeting Report
XII. Discussion Item: Revision to the Corporate Bylaw—Tenure Protection of Chief Audit Executive Position

XIII. Discussion Item: FY2025 Corporate Scorecard
XIV. Discussion Item: Management Program Background and Updates
a. 2025 Board Calendar
b. 2025 Board Agenda Planner
c. CFO Report
i. Financials (through 9/30/24)
ii. Single Invoice Approvals $100K and Over
iii. Vendor Payments $350K and Over
iv. Exceptions
d. Programs Dashboard
e. Housing Stability Counseling Program (HSCP)

PORTIONS OPEN TO THE PUBLIC:
Everything except the Executive (Closed) Session.

PORTIONS CLOSED TO THE PUBLIC:
Executive (Closed) Session.

CONTACT PERSON FOR MORE INFORMATION:
Jenna Sylvester, Paralegal, (202) 568–2560; *jsylvester@nw.org.*

Jenna Sylvester,

Paralegal.

[FR Doc. 2024–29932 Filed 12–13–24; 11:15 am]

BILLING CODE 7570–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–188; NRC–2024–0190]

Kansas State University; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request dated March 7, 2024, as supplemented by letters dated June 11, October 4, and November 20, 2024, from Kansas State University (KSU). The exemption temporarily exempts three licensed senior reactor operators at KSU from the NRC's requirements regarding completing the facility's requalification program and actively performing the functions of a senior operator in order to allow them to resume maintenance activities involving fuel movement, fuel cleaning, and fuel inspection and to return the facility to normal operations.

DATES: The exemption was issued on December 5, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0190 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0190. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The exemption request dated March 7, 2024, and the supplemental letters dated June 11, and October 4, and November 20, 2024, are available in ADAMS under Accession Nos. ML24085A808, ML24164A092, ML24281A032, and ML24326A142, respectively.

• *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Andrew Miller, telephone: 301–415–3398; email: *Andrew.Miller@nrc.gov* and Duane Hardesty, telephone: 301–415–3724; email: *Duane.Hardesty@nrc.gov.* Both are staff of the Office of Nuclear Reactor Regulation at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: December 12, 2024.

Duane A. Hardesty,

Senior Project Manager, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50–188

Kansas State University Nuclear Reactor Facility; Exemption

I. Background

Kansas State University (KSU) holds the U.S. Nuclear Regulatory Commission (NRC, the Commission) Renewed Facility Operating License No. R–88 for the Kansas State University Nuclear Reactor Facility (the facility), which is a Training, Research, Isotopes, General Atomics (TRIGA) research reactor located on the KSU campus in Manhattan, Kansas. Under this license, KSU is authorized to operate the facility at steady-state power levels up to a maximum of 1,250 kilowatts (thermal) and in the pulse mode with reactivity insertions not to exceed specified limits. The license is subject to the rules, regulations, and orders of the NRC.

II. Request/Action

By letter dated March 7, 2024 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML24085A808), as supplemented by letters dated June 11 (ML24164A092), October 4 (ML24281A032), and November 20 (ML24326A142), 2024, KSU requested a temporary exemption from Title 10 of the *Code of Federal Regulations* (10 CFR) 55.53, ''Conditions of licenses,'' paragraphs (e), (f), and (h) and 10 CFR 55.59, ''Requalification,'' paragraph (a) for three licensed senior reactor operators (Docket Nos. 055–71404, 055–70720, and 055–70722) at the facility in order to allow them to resume maintenance activities involving fuel movement, fuel cleaning, and fuel inspection and to return the facility to normal operations.

The regulations at 10 CFR 55.53(e) state:

> If a licensee has not been actively performing the functions of an operator or senior operator, the licensee may not resume activities authorized by a license issued under [10 CFR part 55] except as permitted by paragraph (f) of this section. To maintain active status. . . [f]or test and research reactors, the licensee shall actively perform the functions of an operator or senior operator for a minimum of four hours per calendar quarter.

The regulations at 10 CFR 55.53(f) state:

> If paragraph (e) of this section is not met, before resumption of functions authorized by a license issued under [10 CFR part 55], an authorized representative of the facility licensee shall certify the following:
>
> (1) That the qualifications and status of the licensee are current and valid; and
>
> (2) That the licensee has completed a minimum of 40 hours of shift functions under the direction of an operator or senior operator as appropriate and in the position to which the individual will be assigned. The 40 hours must have included a complete tour of the plant and all required shift turnover procedures. . . . For test and research reactors, a minimum of six hours must have been completed.

The regulations at 10 CFR 55.53(h) state:

> The licensee shall complete a requalification program as described by [10 CFR] 55.59.

And the regulations at 10 CFR 55.59(a) state:

> Each licensee shall—
> (1) Successfully complete a requalification program developed by the facility licensee that has been approved by the Commission. This program shall be conducted for a continuous period not to exceed 24 months in duration.
> (2) Pass a comprehensive requalification written examination and an annual operating test.
> (i) The written examination will sample the items specified in [10 CFR] 55.41 and 55.43 . . ., to the extent applicable to the facility, the licensee, and any limitation of the license under [10 CFR] 55.53(c). . . .
> (ii) The operating test will require the operator or senior operator to demonstrate an understanding of and the ability to perform the actions necessary to accomplish a comprehensive sample of items specified in [10 CFR] 55.45(a) (2) through (13) inclusive to the extent applicable to the facility.
> (iii) In lieu of the Commission accepting a certification by the facility licensee that the licensee has passed written examinations and operating tests administered by the facility licensee within its Commission-approved program developed by using a systems approach to training under paragraph (c) of this section, the Commission may administer a comprehensive requalification written examination and an annual operating test.

According to KSU, the facility has been under an extended shutdown to address a fuel issue identified during routine fuel inspection. As a result of the extended shutdown, three senior operators at the facility are unable to meet a portion of the facility's operator requalification program (the KSU Requalification Plan) related to reactor operations. Additionally, these senior operators have not been actively performing the functions of a senior operator for a minimum of four hours per calendar quarter. Therefore, KSU is requesting to temporarily exempt these senior operators from the NRC's requalification requirements at 10 CFR 55.53(h) and 10 CFR 55.59(a) and the NRC's active performance requirements at 10 CFR 55.53(e) and (f) so that they may resume fuel maintenance activities and return the facility to normal operations. The KSU staff will continue to use the KSU Requalification Plan for requalification requirements that can be completed at the facility and those that cannot be completed at the facility will be accomplished through alternative training or training at the University of Texas at Austin Research Reactor (UTARR). The October 4, 2024, supplement to the exemption request discusses this additional training, including control manipulations at the UTARR and simulations at the facility, lectures, biweekly performance of ''Procedure No. 12—Instrument Checkout,'' and monthly review of operations daily checkout logbooks. The requested duration of the exemption is the sooner of 120 days after the issuance of the exemption or 30 days following the cancellation of the administrative restriction on operations related to the fuel issue. After this time, the senior operators would again be subject to the regulations related to the NRC's requalification and active performance requirements.

As explained below, with the proposed additional training, the requested exemption is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, the NRC grants the requested exemption with respect to the three senior operators named in the exemption request and, pursuant to 10 CFR 55.59(b), requires those senior operators to complete the additional training discussed in the exemption request and to submit evidence to the NRC of the successful completion of that training before returning the facility to normal operations.

III. Discussion

Pursuant to 10 CFR 55.11, ''Specific exemptions,'' the Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in 10 CFR part 55 as it determines (1) are authorized by law, (2) will not endanger life or property, and (3) are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The exemption would allow three senior operators at the facility who do not satisfy the requalification requirements of 10 CFR 55.53(h) and 10 CFR 55.59(a) and the active performance requirements of 10 CFR 55.53(e) and (f) to continue to perform the functions of a senior operator to support the resumption of fuel maintenance activities and the return of the facility to normal operations. As stated above, 10 CFR 55.11 allows the Commission to grant exemptions from the requirements of 10 CFR part 55, including 10 CFR 55.53(e), (f), and (h) and 10 CFR 55.59(a), when the exemptions are authorized by law. Exemptions are authorized by law where they are not expressly prohibited by statute or regulation. A proposed exemption is implicitly authorized by law if it will not endanger life or property and is otherwise in the public interest and no other provisions in law prohibit, or otherwise restrict, its application. The NRC staff has determined, as explained next, that no provisions in law expressly prohibit or otherwise restrict the requested exemption. The NRC staff has also determined, as explained in subsequent sections of this document, that the requested exemption will not endanger life or property and is otherwise in the public interest.

The regulations in 10 CFR part 55 implement Section 107 of the Atomic Energy Act of 1954, as amended (AEA), which states, in part, that the Commission shall (1) prescribe uniform conditions for licensing individuals as operators of any of the various classes of utilization facilities licensed by the NRC and (2) determine the qualifications of such individuals. These requirements in the AEA do not expressly prohibit exemptions from 10 CFR 55.53(e), (f), and (h) and 10 CFR 55.59(a), which require licensed operators to maintain proficiency by actively performing the functions of an operator for a minimum number of hours and to complete a requalification program. Further, as discussed below, the requested exemption would have little impact on the uniformity of operator licensing conditions or on operator qualification requirements.

In its exemption request, KSU stated that the purpose of the exemption request is to allow the resumption of fuel maintenance activities, including fuel cleaning and inspections, to provide a pathway for returning the facility to normal operations. This cannot currently be accomplished because three senior operators at the facility do not satisfy the proficiency and requalification requirements of the NRC's regulations due to the extended shutdown of the facility. Under the exemption, KSU would continue to use the KSU Requalification Plan for requalification requirements that can be completed at the facility and those that cannot be completed at the facility would be satisfied by performing the additional training described in the request, including additional training at the UTARR. Although fuel maintenance activities could be resumed upon the issuance of the exemption, pursuant to 10 CFR 55.59(b), the Commission would require the senior operators to complete the additional training and submit evidence to the Commission of the successful completion of this training before returning the facility to normal operations. After this, the senior operators would again be subject to the regulations related to the NRC's requalification and active performance

requirements. Therefore, granting the exemption request would have little impact on the uniformity of operator licensing conditions or on operator qualification requirements.

Because no provisions in law expressly prohibit the requested exemption and because, as explained in subsequent sections of this document, the requested exemption will not endanger life or property and is otherwise in the public interest, the NRC staff has determined that the exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property

The exemption would allow three senior operators at the facility who do not satisfy the requalification requirements of 10 CFR 55.53(h) and 10 CFR 55.59(a) and the active performance requirements of 10 CFR 55.53(e) and (f) to continue to perform the functions of a senior operator to support the resumption of fuel maintenance activities and the return of the facility to normal operations. As stated above, 10 CFR 55.11 allows the Commission to grant exemptions from the requirements of 10 CFR part 55, including 10 CFR 55.53(e), (f), and (h) and 10 CFR 55.59(a), when they will not endanger life or property.

The requested exemption will not endanger life or property because it would allow persons experienced with licensed activities involving fuel maintenance to resume inspections and cleaning of the fuel with the reactor shutdown. These activities would be performed consistent with the facility's Commission-approved technical specifications and would, therefore, ensure that the necessary quality of systems and components is maintained.

Further, the requested exemption will not endanger life or property because KSU has proposed additional training for the three senior operators that would provide reasonable assurance of their competence as senior operators regarding facility operations equivalent to that required by the NRC's regulations and because that additional training would be required by the NRC, pursuant to 10 CFR 55.59(b), including the submission of evidence to the Commission of the successful completion of the training, before the facility is returned to normal operations. As KSU stated in the October 4, 2024, supplement to the exemption request, the KSU Requalification Plan would continue to be used, and supplemented, for items that can be completed at the facility, such as through training and lectures, including biweekly performance of ''Procedure No. 12—Instrument Checkout,'' and monthly review of operations daily checkout logbooks. The items in the plan that cannot be completed at the facility, such as control manipulations, would be accomplished at the UTARR to satisfy the operating test requalification requirements of 10 CFR 55.45(a)(2), (5), and (6). Both the UTARR and the KSU facility have a similar licensed power. Operations may be conducted at the UTARR between shutdown and designated power levels similar to the KSU facility. Additionally, both facilities utilize TRIGA fuel and graphite reflection, hence operating behavior characteristics during control manipulations will have a similar response.

Based on the above, the NRC staff determined that the UTARR is sufficiently similar to the KSU facility such that the additional training proposed to be conducted at the UTARR, in combination with the conduct of the KSU Requalification Plan, as supplemented, at the facility, provides reasonable assurance of the competence of the three senior operators to perform the functions of a senior operator at the KSU facility. Although fuel maintenance activities may be resumed upon the issuance of this exemption, pursuant to 10 CFR 55.59(b), the senior operators must complete the additional training discussed above and submit evidence to the Commission of the successful completion of this training before returning the facility to normal operations. Therefore, the NRC staff has determined that the exemption will not endanger life or property.

C. The Exemption Is Otherwise in the Public Interest

The exemption would allow three senior operators at the facility who do not satisfy the requalification requirements of 10 CFR 55.53(h) and 10 CFR 55.59(a) and the active performance requirements of 10 CFR 55.53(e) and (f) to continue to perform the functions of a senior operator to support the resumption of fuel maintenance activities and the return of the facility to normal operations. As stated above, 10 CFR 55.11 allows the Commission to grant exemptions from the requirements of 10 CFR part 55, including 10 CFR 55.53(e), (f), and (h) and 10 CFR 55.59(a), when they are otherwise in the public interest.

The Commission's values guide the NRC in maintaining certain principles of good regulation as it carries out regulatory activities in furtherance of its safety and security mission. These principles focus the NRC on ensuring safety and security while appropriately considering the interests of the NRC's stakeholders, including the public and licensees. The NRC's principles of good regulation can also provide guidance as to whether the granting of a particular exemption is otherwise in the public interest.

On balance, the NRC's principles of good regulation demonstrate that the granting of the requested exemption is otherwise in the public interest. The scope of the exemption is limited to resuming fuel maintenance activities and to returning the facility to normal operations. The three senior operators would be allowed to resume fuel maintenance activities, including fuel cleaning and inspections, upon the issuance of the exemption; however, pursuant to 10 CFR 55.59(b), the senior operators would be required to complete the additional training discussed above and to submit evidence to the Commission of the successful completion of this training before returning the facility to normal operations. As discussed above, this would ensure that the senior operators have the competence required to perform these duties. Moreover, the exemption would expire the sooner of 120 days after the issuance of the exemption or 30 days following the cancellation of the administrative restriction on operations related to the fuel issue. After this time, the senior operators would again be fully subject to the regulations related to the NRC's requalification and active performance requirements. Thus, the exemption is narrowly tailored and does not make any permanent changes to the senior operator licenses, the facility license, or KSU programs. This approach provides for an efficient and clear resolution to a situation that is outside of the considerations of the applicable regulations. Therefore, the NRC staff has determined that the exemption is otherwise in the public interest.

D. Environmental Considerations

The exemption would allow three senior operators at the facility who do not satisfy the requalification requirements of 10 CFR 55.53(h) and 10 CFR 55.59(a) and the active performance requirements of 10 CFR 55.53(e) and (f) to continue to perform the functions of a senior operator to support the resumption of fuel maintenance activities and the return of the facility to normal operations. For the following reasons, the NRC staff determined that this exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). There are no special or extraordinary circumstances present that would

preclude reliance on this exclusion. The NRC staff determined, in accordance with 10 CFR 51.22(c)(25)(vi)(E), that the requirements from which the exemption is sought involve education, training, experience, qualification, requalification, or other employment suitability requirements. The NRC staff also determined that granting the requested exemption involves no significant hazards consideration because it does not authorize any physical changes to the facility or any of its safety systems or change any of the assumptions or limits used in the facility licensee's safety analyses or introduce any new failure modes; there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite because the exemption does not affect any effluent release limits as provided in the facility licensee's technical specifications or by 10 CFR part 20; there is no significant increase in individual or cumulative public or occupational radiation exposure because the exemption does not affect the limits on the release of any radioactive material or the limits provided in 10 CFR part 20 for radiation exposure to workers or members of the public; there is no significant construction impact because the exemption does not involve any changes to a construction permit; and there is no significant increase in the potential for or consequences from radiological accidents because the exemption does not alter any of the assumptions or limits in the facility licensee's safety analyses. In addition, the NRC staff determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared in connection with the granting of the exemption.

IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, the exemption is authorized by law, will not endanger life or property, and is otherwise in the public interest. Therefore, the Commission hereby grants, with respect to the three senior operators named in the exemption request, an exemption from the NRC's requalification requirements at 10 CFR 55.53(h) and 10 CFR 55.59(a) and the NRC's active performance requirements at 10 CFR 55.53(e) and (f) to continue to perform the functions of a senior operator to support the resumption of fuel maintenance activities and the return of the facility to normal operations. Although fuel maintenance activities may be resumed upon the issuance of this exemption, pursuant to 10 CFR 55.59(b), the senior operators must complete the additional training discussed above and submit evidence to the Commission of the successful completion of this training before returning the facility to normal operations. This exemption expires the sooner of (1) 120 days after issuance or (2) 30 days following the cancellation of the facility temporary administrative limit/special condition for operation stipulating in the entry on November 22, 2021, of Attachment 1, ''Condition/Limit Log,'' in ''SOM1 Operational Limits and Special Administrative Controls'' that ''No operation until fuel element findings resolved.''

This exemption is effective upon issuance.

V. Availability of Documents

The documents identified in the following table are related to the requested exemption and available to interested persons through the NRC's ADAMS at *https://adams.nrc.gov/wba/*.

Document	ADAMS accession No.
KSU letter, ''License Requirements Exemption Request,'' dated March 7, 2024.	ML24085A808
KSU letter, ''License Requirements Exemption Request Supplemental Information,'' dated June 11, 2024.	ML24164A092
KSU letter, ''License Requirements Exemption Request Additional Supplemental Information,'' dated October 4, 2024.	ML24281A032
KSU letter, ''License Requirements Exemption Request Further Supplemental Information,'' dated November 20, 2024.	ML24326A142

Dated: December 05, 2024.

/RA/

Jeremy Bowen, Director,

Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–29695 Filed 12–16–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Members of Senior Executive Service Performance Review Board

This notice announces the membership of the U.S. Nuclear Waste Technical Review Board (NWTRB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: Effective immediately and until December 10, 2025.

ADDRESSES: Send comments concerning this notice to: U.S. Nuclear Waste Technical Review Board, Clarendon Blvd., Suite 1300, Arlington, VA 22201–3367.

FOR FURTHER INFORMATION CONTACT: Kimberly Brown, Human Resources Specialist, *brown@nwtrb.gov,* 703–235–4473.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5 of the United States Code, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. Section 4314(c)(4) of Title 5 requires that notice of appointment of board members be published in the **Federal Register**.

The following executives have been designated as members of the Performance Review Board for the U.S. Nuclear Waste Technical Review Board:

R. Todd Davis, Associate Technical Director, Nuclear Programs and Analysis, Defense Nuclear Facilities Safety Board

Michael A. Mikolanis, Manager, Savannah River Field Office, National Nuclear Security Administration

Mark T. Sautman, Acting Deputy Technical Director, Defense Nuclear Facilities Safety Board

Gregory Sosson, Associate Principal Deputy Assistant Secretary Field Operations, Office of Environmental Management, U.S. Department of Energy

Christopher Roscetti, Deputy Director for Environment, Health, and Safety, U.S. Department of Energy

Dated: December 10, 2024.

Neysa M. Slater-Chandler,

Director of Administration, U.S. Nuclear Waste Technical Review Board.

[FR Doc. 2024–29671 Filed 12–16–24; 8:45 am]

BILLING CODE 6820–AM–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Generic Clearance for Collection of Feedback on Agency Service Delivery

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice of proposed collection and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a proposed collection of information by the Agency. This process is conducted as part of OPM's effort to streamline the process to collect feedback from the public to support ongoing customer experience improvement efforts. OPM will seek feedback from users or possible users of OPM's various customer services.

DATES: Comments are encouraged and will be accepted until February 18, 2025.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection by one of the following means:

Federal Rulemaking Portal: http://www.regulations.gov All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection request, with applicable supporting documentation, may be obtained by contacting the Office of the Chief Financial Officer, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Megan Kays, via phone at 202–606–1918 or via electronic mail to *evidence@opm.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act (PRA), (*44 U.S.C. 3501–3520*) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in *44 U.S.C. 3502(3)* and *5 CFR 1320.3(c)* and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval.

The proposed information collections will seek customer and stakeholder feedback in an efficient manner to enable continued, timely customer experience improvements. This feedback will provide insights into customer and/or stakeholder experiences, expectations, and perceptions of interactions with OPM services. The feedback will also serve to highlight areas that may require immediate changes. These collections will streamline OPM's customer experience improvement efforts by allowing for ongoing, actionable communication between OPM and its customers. If this information is not collected, timely, vital feedback will continue to be very difficult to obtain and will impact the success of OPM's ongoing customer service improvements.

These data collection efforts will solicit feedback on a variety of focus areas for OPM's customer services, including topics such as, accuracy, ease of access/use of a particular service mechanism, understanding and success of utilizing a tool or service provided by OPM, effectiveness, efficiency of services accessed, and whether or not a service met expectations. Responses will be analyzed to inform quality improvements or to maintain high-quality, effective services.

Collections may be either qualitative or quantitative in nature. Collections will provide information on perceptions and opinions but will not collect information that will yield quantitative results that can be generalized to the population of study. Additionally, data may be collected via a variety of means, including but not limited to, questionnaires, surveys, interviews, and focus groups. OPM will collect this information by electronic means when possible, as well as by mail and telephone. OPM will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request. As a general matter, information collections under this clearance will not result in any new system of records containing privacy information.

Types of collections included in this generic clearance include, but are not limited to,

—Program/event/training surveys;

—Focus groups or interviews with customers, potential customers, or OPM partners;

—Call center surveys;

—Post-transaction satisfaction surveys;

—Collection of test and pilot data; and

—Web-based opt-in and opt-out pop-up surveys.

OPM will submit collections for approval under this generic clearance only if the collections meet the following conditions:

—The collections are voluntary;

—The collections are low-burden (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

—Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

—The collections are noncontroversial; Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

—The collections will not be designed or expected to yield results that are generalizable to the population of study.

Analysis

Agency: Office of Personnel Management.

Title: Generic Clearance for Collection of Feedback on Agency Service Delivery.

OMB Number: 3206–NEW.

Frequency: On occasion, once per respondent.

Affected Public: Individuals.

Number of Respondents Annually: 283,250.

Estimated Time per Respondent: 2.9 minutes.

Total Annual Burden Hours: 13,508.83.

Office of Personnel Management.

Alexys Stanley,

Federal Register Liaison.

[FR Doc. 2024–29594 Filed 123–16–24; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–759 and K2025–758; MC2025–760 and K2025–759; MC2025–761 and K2025–760; MC2025–762 and K2025–761; MC2025–763 and K2025–762; MC2025–764 and K2025–763; MC2025–765 and K2025–764; MC2025–766 and K2025–765; MC2025–767 and K2025–766; MC2025–768 and K2025–767; MC2025–769 and K2025–768; MC2025–771 and K2025–770; MC2025–772 and K2025–771; MC2025–773 and K2025–772; MC2025–774 and K2025–773; MC2025–775 and K2025–774; MC2025–776 and K2025–775; MC2025–777 and K2025–776; MC2025–778 and K2025–777; MC2025–779 and K2025–778; MC2025–780 and K2025–779; MC2025–781 and K2025–780; MC2025–782 and K2025–781; MC2025–783 and K2025–782; MC2025–784 and K2025–783; MC2025–785 and K2025–784; MC2025–786 and K2025–785; MC2025–787 and K2025–786; MC2025–788 and K2025–787; MC2025–789 and K2025–788; MC2025–790 and K2025–789; MC2025–791 and K2025–790; MC2025–792 and K2025–791]

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 19, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. 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 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).:* MC2025–759 and K2025–758; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1009 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 19, 2024.

2. *Docket No(s).:* MC2025–760 and K2025–759; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1010 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 19, 2024.

3. *Docket No(s).:* MC2025–761 and K2025–760; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1011 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 19, 2024.

4. *Docket No(s).:* MC2025–762 and K2025–761; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1012 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Arif Hafiz; *Comments Due:* December 19, 2024.

5. *Docket No(s).:* MC2025–763 and K2025–762; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1013 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 19, 2024.

6. *Docket No(s).:* MC2025–764 and K2025–763; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1014 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 19, 2024.

[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).

7. *Docket No(s).:* MC2025–765 and K2025–764; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 527 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Arif Hafiz; *Comments Due:* December 19, 2024.

8. *Docket No(s).:* MC2025–766 and K2025–765; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 528 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 19, 2024.

9. *Docket No(s).:* MC2025–767 and K2025–766; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1015 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 19, 2024.

10. *Docket No(s).:* MC2025–768 and K2025–767; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1016 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 19, 2024.

11. *Docket No(s).:* MC2025–769 and K2025–768; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1017 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 19, 2024.

12. *Docket No(s).:* MC2025–771 and K2025–770; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1018 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 19, 2024.

13. *Docket No(s).:* MC2025–772 and K2025–771; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1019 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 19, 2024.

14. *Docket No(s).:* MC2025–773 and K2025–772; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1020 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 19, 2024.

15. *Docket No(s).:* MC2025–774 and K2025–773; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1021 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 19, 2024.

16. *Docket No(s).:* MC2025–775 and K2025–774; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1022 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 19, 2024.

17. *Docket No(s).:* MC2025–776 and K2025–775; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1023 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 19, 2024.

18. *Docket No(s).:* MC2025–777 and K2025–776; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1024 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 19, 2024.

19. *Docket No(s).:* MC2025–778 and K2025–777; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 529 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 19, 2024.

20. *Docket No(s).:* MC2025–779 and K2025–778; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 530 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 19, 2024.

21. *Docket No(s).:* MC2025–780 and K2025–779; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1025 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 19, 2024.

22. *Docket No(s).:* MC2025–781 and K2025–780; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1026 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 19, 2024.

23. *Docket No(s).:* MC2025–782 and K2025–781; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1027 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 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 19, 2024.

24. *Docket No(s).:* MC2025–783 and K2025–782; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1028 to the Competitive Product List and Notice of Filing

Materials Under Seal; *Filing Acceptance Date:* December 11, 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 19, 2024.

25. *Docket No(s).:* MC2025–784 and K2025–783; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1029 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 19, 2024.

26. *Docket No(s).:* MC2025–785 and K2025–784; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1030 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 19, 2024.

27. *Docket No(s).:* MC2025–786 and K2025–785; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1031 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 19, 2024.

28. *Docket No(s).:* MC2025–787 and K2025–786; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 531 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 19, 2024.

29. *Docket No(s).:* MC2025–788 and K2025–787; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1032 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 19, 2024.

30. *Docket No(s).:* MC2025–789 and K2025–788; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1033 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* December 19, 2024.

31. *Docket No(s).:* MC2025–790 and K2025–789; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1034 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 19, 2024.

32. *Docket No(s).:* MC2025–791 and K2025–790; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1035 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 19, 2024.

33. *Docket No(s).:* MC2025–792 and K2025–791; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 532 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 11, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 19, 2024.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Mallory S. Richards,

Federal Register Liaison.

[FR Doc. 2024–29687 Filed 12–16–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025–731 and K2025–730; MC2025–732 and K2025–731; MC2025–733 and K2025–732; MC2025–734 and K2025–733; MC2025–735 and K2025–734; MC2025–736 and K2025–735; MC2025–737 and K2025–736; MC2025–738 and K2025–737; MC2025–739 and K2025–738; MC2025–740 and K2025–739; MC2025–741 and K2025–740; MC2025–742 and K2025–741; MC2025–743 and K2025–742; MC2025–744 and K2025–743; MC2025–745 and K2025–744; MC2025–746 and K2025–745; MC2025–747 and K2025–746; MC2025–748 and K2025–747; MC2025–749 and K2025–748; MC2025–750 and K2025–749; MC2025–751 and K2025–750; MC2025–752 and K2025–751; MC2025–753 and K2025–752; MC2025–754 and K2025–753; MC2025–755 and K2025–754; MC2025–756 and K2025–755; MC2025–757 and K2025–756; MC2025–758 and K2025–757]

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 18, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via

the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* MC2025–731 and K2025–730; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 987 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 18, 2024.

2. *Docket No(s).:* MC2025–732 and K2025–731; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 988 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 18, 2024.

3. *Docket No(s).:* MC2025–733 and K2025–732; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 986 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 18, 2024.

4. *Docket No(s).:* MC2025–734 and K2025–733; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 989 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 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 18, 2024.

5. *Docket No(s).:* MC2025–735 and K2025–734; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 522 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 18, 2024.

6. *Docket No(s).:* MC2025–736 and K2025–735; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 523 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 18, 2024.

7. *Docket No(s).:* MC2025–737 and K2025–736; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 524 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 18, 2024.

8. *Docket No(s).:* MC2025–738 and K2025–737; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 525 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 18, 2024.

9. *Docket No(s).:* MC2025–739 and K2025–738; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 990 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 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 18, 2024.

10. *Docket No(s).:* MC2025–740 and K2025–739; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 991 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 18, 2024.

11. *Docket No(s).:* MC2025–741 and K2025–740; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 992 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 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 18, 2024.

12. *Docket No(s).:* MC2025–742 and K2025–741; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 993 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* December 18, 2024.

13. *Docket No(s).:* MC2025–743 and K2025–742; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground

[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).

Advantage Contract 526 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* December 18, 2024.

14. *Docket No(s).:* MC2025–744 and K2025–743; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 994 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 18, 2024.

15. *Docket No(s).:* MC2025–745 and K2025–744; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 995 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 18, 2024.

16. *Docket No(s).:* MC2025–746 and K2025–745; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 996 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 18, 2024.

17. *Docket No(s).:* MC2025–747 and K2025–746; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 997 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 18, 2024.

18. *Docket No(s).:* MC2025–748 and K2025–747; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 998 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 18, 2024.

19. *Docket No(s).:* MC2025–749 and K2025–748; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 999 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 18, 2024.

20. *Docket No(s).:* MC2025–750 and K2025–749; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1000 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 18, 2024.

21. *Docket No(s).:* MC2025–751 and K2025–750; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1001 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 18, 2024.

22. *Docket No(s).:* MC2025–752 and K2025–751; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1002 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 18, 2024.

23. *Docket No(s).:* MC2025–753 and K2025–752; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1003 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* December 18, 2024.

24. *Docket No(s).:* MC2025–754 and K2025–753; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1004 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Samuel Robinson; *Comments Due:* December 18, 2024.

25. *Docket No(s).:* MC2025–755 and K2025–754; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1005 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* December 18, 2024.

26. *Docket No(s).:* MC2025–756 and K2025–755; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1006 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 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 18, 2024.

27. *Docket No(s).:* MC2025–757 and K2025–756; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1007 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* December 18, 2024.

28. *Docket No(s).:* MC2025–758 and K2025–757; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1008 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 10, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* December 18, 2024.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Mallory S. Richards,

Federal Register Liaison.

[FR Doc. 2024–29648 Filed 12–16–24; 8:45 am]

BILLING CODE 7710–FW–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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 495 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–576, K2025–574.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29735 Filed 12–16–24; 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 17, 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 843 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–556, K2025–554.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29719 Filed 12–16–24; 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 17, 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 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 868 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–591, K2025–590.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29757 Filed 12–16–24; 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 17, 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 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 872 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–595, K2025–594.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29761 Filed 12–16–24; 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 17, 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 832 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–543, K2025–541.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29708 Filed 12–16–24; 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 17, 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 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 874 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–597, K2025–596.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29763 Filed 12–16–24; 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 17, 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 859 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–572, K2025–570.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29750 Filed 12–16–24; 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 17, 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 855 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–568, K2025–566.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29746 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 897 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–623, K2025–622.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29821 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 882 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–605, K2025–604.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29786 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 905 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–631, K2025–630.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29810 Filed 12–16–24; 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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 500 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–588, K2025–587.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29768 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 900 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–626, K2025–625.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29805 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 908 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–637, K2025–636.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29813 Filed 12–16–24; 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 17, 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 865 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–584, K2025–583.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29774 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 886 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2025–611, K2025–610.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29790 Filed 12–16–24; 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 17, 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 846 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–559, K2025–557.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29722 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 877 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–600, K2025–599.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29781 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 885 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–610, K2025–609.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29789 Filed 12–16–24; 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 17, 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 847 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–560, K2025–558.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29738 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 890 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–616, K2025–615.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29794 Filed 12–16–24; 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 17, 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 853 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–566, K2025–564.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29744 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 898 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2025–624, K2025–623.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29822 Filed 12–16–24; 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 17, 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 837 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–549, K2025–547.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29713 Filed 12–16–24; 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 17, 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 860 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–573, K2025–571.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29751 Filed 12–16–24; 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 17, 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 854 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–567, K2025–565.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29745 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 893 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–619, K2025–618.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29804 Filed 12–16–24; 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 17, 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 867 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–589, K2025–588.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29776 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 899 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–625, K2025–624.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29823 Filed 12–16–24; 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 17, 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 861 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–579, K2025–578.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29770 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 891 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–617, K2025–616.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29795 Filed 12–16–24; 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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 496 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–577, K2025–575.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29736 Filed 12–16–24; 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 17, 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 831 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–542, K2025–540.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29707 Filed 12–16–24; 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 17, 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 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 871 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–594, K2025–593.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29760 Filed 12–16–24; 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 17, 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 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 873 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–596, K2025–595.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29762 Filed 12–16–24; 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 17, 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 December 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 504 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–612, K2025–611.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29779 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 896 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–622, K2025–621.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29820 Filed 12–16–24; 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 17, 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 844 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–557, K2025–555.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29720 Filed 12–16–24; 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 17, 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 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 490 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2025–541, K2025–539.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29725 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 887 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–613, K2025–612.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29791 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 901 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–627, K2025–626.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29806 Filed 12–16–24; 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 17, 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 857 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–570, K2025–568.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29748 Filed 12–16–24; 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 17, 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 840 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–552, K2025–550.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29716 Filed 12–16–24; 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 17, 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 845 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–558, K2025–556.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29721 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 907 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2025–633, K2025–632.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29812 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 903 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–629, K2025–628.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29808 Filed 12–16–24; 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 17, 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 834 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–546, K2025–544.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29710 Filed 12–16–24; 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 17, 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 841 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–553, K2025–551.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29717 Filed 12–16–24; 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 17, 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 849 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–562, K2025–560.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29740 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 875 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–598, K2025–597.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29764 Filed 12–16–24; 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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 499 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–586, K2025–585.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29767 Filed 12–16–24; 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 17, 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 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 489 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–540, K2025–538.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29724 Filed 12–16–24; 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 17, 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 852 to Competitive Product List.* Documents

are available at *www.prc.gov,* Docket Nos. MC2025–565, K2025–563.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29743 Filed 12–16–24; 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 17, 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 863 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–581, K2025–580.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29772 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 878 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–601, K2025–600.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29782 Filed 12–16–24; 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 17, 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 856 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–569, K2025–567.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29747 Filed 12–16–24; 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 17, 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 850 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–563, K2025–561.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29741 Filed 12–16–24; 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 17, 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 866 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–585, K2025–584.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29775 Filed 12–16–24; 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 17, 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 838 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–550, K2025–548.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29714 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 881 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–604, K2025–603.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29785 Filed 12–16–24; 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 17, 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 842 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–555, K2025–553.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29718 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 883 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–606, K2025–605.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29787 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 889 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–615, K2025–614.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29793 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 880 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–603, K2025–602.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29784 Filed 12–16–24; 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 17, 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 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 492 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–554, K2025–552.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29732 Filed 12–16–24; 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 17, 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 December 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 501 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–590, K2025–589.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29769 Filed 12–16–24; 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 17, 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 27, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 491 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–545, K2025–543.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29726 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 879 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–602, K2025–601.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29783 Filed 12–16–24; 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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 498 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–583, K2025–582.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29766 Filed 12–16–24; 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 17, 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 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 870 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–593, K2025–592.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29759 Filed 12–16–24; 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 17, 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 858 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–571, K2025–569.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29749 Filed 12–16–24; 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 17, 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 December 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 505 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–634, K2025–633.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29815 Filed 12–16–24; 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 17, 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 864 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–582, K2025–581.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29773 Filed 12–16–24; 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 17, 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 December 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 508 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–638, K2025–637.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29818 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 902 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–628, K2025–627.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29807 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 884 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–609, K2025–608.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29788 Filed 12–16–24; 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 17, 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 862 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–580, K2025–579.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29771 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 892 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–618, K2025–617.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29796 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 906 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–632, K2025–631.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29811 Filed 12–16–24; 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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 494 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–575, K2025–573.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29734 Filed 12–16–24; 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 17, 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 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 869 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–592, K2025–591.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29758 Filed 12–16–24; 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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 497 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–578, K2025–576.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29737 Filed 12–16–24; 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 17, 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 833 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–544, K2025–542.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29709 Filed 12–16–24; 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 17, 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 29, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 488 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–539, K2025–537.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29723 Filed 12–16–24; 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 17, 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 836 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–548, K2025–546.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29712 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 888 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–614, K2025–613.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29792 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 904 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–630, K2025–629.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29809 Filed 12–16–24; 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 17, 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 December 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 506 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–635, K2025–634.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29816 Filed 12–16–24; 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 17, 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 835 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–547, K2025–545.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29711 Filed 12–16–24; 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 17, 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 851 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–564, K2025–562.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29742 Filed 12–16–24; 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 17, 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 848 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–561, K2025–559.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29739 Filed 12–16–24; 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 17, 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 December 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 507 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–636, K2025–635.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29817 Filed 12–16–24; 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 17, 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 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 876 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–599, K2025–598.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29780 Filed 12–16–24; 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 17, 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 December 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 503 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–608, K2025–607.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29778 Filed 12–16–24; 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 17, 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 839 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–551, K2025–549.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29715 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 895 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–621, K2025–620.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29819 Filed 12–16–24; 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 17, 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 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 894 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–620, K2025–619.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29814 Filed 12–16–24; 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 17, 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 December 4, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 502 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–607, K2025–606.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29777 Filed 12–16–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add USPS Ground Advantage® Contract 11 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–587, K2025–586.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29765 Filed 12–16–24; 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 17, 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 December 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 493 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2025–574, K2025–572.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–29733 Filed 12–16–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101883; File No. SR–DTC–2024–011]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Amend the Clearing Agency Investment Policy

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2024, The Depository Trust Company (''DTC'') 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 clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Investment Policy (''Investment Policy'', or ''Policy'') of DTC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies'') [3] and would facilitate changes to the FICC Government Securities Division Rulebook (''GSD Rules'') that will be implemented by FICC.[4]

Specifically, as described in greater detail in the Account Segregation Filing, FICC will implement changes to the GSD Rules that will, among other things, provide for FICC to (1) hold margin collected with respect to the proprietary transactions of a Netting Member separately and independently from the margin collected with respect to transactions that a Netting Member submits to FICC on behalf of indirect participants, (2) legally segregate certain margin collected with respect to indirect participant transactions from the margin for a Netting Member's proprietary transactions (as well as those of other indirect participants), and (3) limit investments of certain margin collected with respect to indirect participant transactions to only U.S. Treasuries with a maturity date of one year or less. The Clearing Agencies are proposing to amend the Policy to facilitate implementation of these changes and would also make other clean-up changes to the Policy, as described in greater detail below.

The changes that were proposed in the Account Segregation Filing and the changes proposed to the Investment Policy herein are collectively designed to comply with certain requirements of Rule 17ad–22(e)(6)(i) under the Act,[5] and to ensure that FICC has appropriate rules to satisfy certain conditions of Note H to Rule 15c3–3a under the Act for a broker-dealer to record a debit in the customer and broker-dealer proprietary account reserve formulas.[6]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Investment Policy governs the management, custody and investment of cash deposited to the respective NSCC and FICC Clearing Funds, and the DTC Participants Fund,[7] the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules. In doing this, the Investment Policy identifies the guiding principles for investments and defines the roles and responsibilities of DTCC [8] staff in administering the Investment Policy pursuant to those principles. The guiding principles for investments set forth in Section 3 of the Investment Policy address, among other things, how the Clearing Agencies segregate and separately hold cash deposited to the NSCC Clearing Fund, the Clearing Fund of FICC's Government Securities Division (''GSD''), the Clearing Fund of FICC's Mortgage-Backed Securities Division (''MBSD'') and the DTC Participants Fund. The Investment Policy also identifies sources of funds that may be invested, and the permitted investments of those funds, including the authority required to make such investments and the parameters of, and limitations on, each type of investment.

The Commission recently adopted amendments to Rule 17ad–22(e)(6)(i) under the Act that are applicable to FICC as a covered clearing agency that provides, through GSD, central counterparty services for transactions in U.S. Treasury securities.[9] These amendments require, among other things, that FICC hold margin from a direct participant for its proprietary transactions separately and independently from the margin calculated and collected for the transactions of an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[10]

In the Treasury Clearing Rules, the Commission also amended its customer protection rule (''Rule 15c3–3'') [11] and the reserve formulas thereunder (''Rule 15c3–3a''),[12] to permit broker-dealers to include margin required and on deposit at FICC as a debit item in the reserve formula under certain conditions. One of the conditions for the relief is that the margin be collected in accordance with the GSD Rules that impose certain requirements, which include, among other things, that FICC (i) only invest cash margin in U.S. Treasuries with a maturity of one year or less, and (ii) must hold the margin itself or at an account of a Federal Reserve Bank or an FDIC-insured bank, which account must be segregated from any other account of FICC or any other person at a U.S. Federal Reserve Bank or FDIC-insured bank and used exclusively to hold customer assets to meet the current margin requirements of FICC resulting from positions in U.S. Treasury securities of the customers of the broker-dealer members of FICC.[13]

In the Account Segregation Filing, FICC proposed changes to the GSD Rules to comply with the requirements of the Treasury Clearing Rules. Such changes are expected to be implemented in the GSD Rules by no later than March 31, 2025 and will, among other things, (1) provide for FICC to calculate, collect, and hold margin for the proprietary transactions of a Netting Member separately and independently from the margin for transactions that the Netting Member submits to FICC on behalf of indirect participants, and (2) allow Netting Members to elect for margin for

[3] *See* Securities Exchange Act Release No. 79528 (Dec. 12, 2016), 81 FR 91232 (Dec. 16, 2016) (SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003).

[4] *See* Securities Exchange Act Release No. 101695 (Nov. 21, 2024), 89 FR 93763 (Nov. 27, 2024) (SR–FICC–2024–007) (''Account Segregation Filing''). The changes proposed in the Account Segregation Filing are expected to be implemented by no later than March 31, 2025, on a date to be announced by an Important Notice posted to FICC's website. Terms not defined herein are defined in the GSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[5] 17 CFR 240.17ad–22(e)(6)(i). *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (''Adopting Release,'' and the rules adopted therein referred to herein as ''Treasury Clearing Rules'').

[6] 17 CFR 240.15c3–3a, Note H. *See id.*

[7] The respective Clearing Funds of NSCC, FICC's GSD and FICC's MBSD, and the DTC Participants Fund are described further in the Rules & Procedures of NSCC (''NSCC Rules''), the DTC Rules, By-laws and Organization Certificate (''DTC Rules''), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD Rules'') or the GSD Rules, respectively, *available at http://dtcc.com/legal/rules-and-procedures. See* Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules, and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

[8] The Depository Trust & Clearing Corporation (''DTCC'') is the parent company of the Clearing Agencies.

[9] 17 CFR 240.17ad–22(e)(6)(i).

[10] *Id.*

[11] 17 CFR 240.15c3–3.

[12] 17 CFR 240.15c3–3a.

[13] *Id.*

indirect participant transactions to be calculated on a gross basis (*i.e.,* an indirect participant-by-indirect participant basis) and legally segregated from the margin for the Netting Member's proprietary transactions (as well as those of other indirect participants).[14]

The proposed changes to the Investment Policy would facilitate the implementation of the changes that will be made to the GSD Rules pursuant to the Account Segregation Filing, as described in greater detail below.

i. Separately Holding Indirect Participant Margin

First, the proposed changes to the Investment Policy would facilitate the implementation of the changes to the GSD Rules that will require FICC to calculate, collect, and hold margin for the proprietary transactions of a GSD Netting Member separately and independently from margin collected with respect to transactions that a Netting Member submits to FICC on behalf of indirect participants.

The proposed changes to the Policy would do this by first amending Section 2 to include a definition of Indirect Participants Clearing Fund Deposits to mean ''the total amount deposited in the GSD Clearing Fund to support activity in Agent Clearing Member Omnibus Accounts and Sponsoring Member Omnibus Accounts, other than Segregated Indirect Participants Accounts, as such terms are defined in the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'').'' Next, the proposed changes would amend Section 3.2 (Section 3 describes the guiding principles that underpin the Policy) regarding the separation and segregation of cash deposits to the NSCC, GSD and MBSD Clearing Funds, and the DTC Participants Fund. Within this section, the proposed changes would specify that Indirect Participants Clearing Fund Deposits shall be held separately and independently on FICC's books and records from all other deposits to the GSD Clearing Fund.

In connection with this change, the proposed changes to the Policy would also amend Section 5, which describes investable funds that are invested by the Clearing Agencies pursuant to the Policy. The changes to this section would provide that Indirect Participants Clearing Fund Deposits are included in the GSD Clearing Fund. This proposed change would clarify that these funds are considered investable funds under the Policy, to be invested similarly to other cash deposits to the GSD Clearing Fund.

ii. Legally Segregating and Limiting Investments of Segregated Customer Margin

Second, the proposed changes to the Investment Policy would facilitate implementation of the changes that will be made to the GSD Rules pursuant to the Account Segregation Filing that will require FICC to legally segregate certain Indirect Participants Clearing Fund Deposits that have been designated by GSD Netting Members for such segregation (''Segregated Customer Margin''), and to hold and invest such funds in a manner that meets the conditions set forth in the Commission's amendments to Rule 15c3–3 and Rule 15c3–3a.[15]

The GSD Rules will describe the manner in which FICC will meet the requirements of Rule 15c3–3 and Rule 15c3–3a with respect to Segregated Customer Margin. The standards that FICC must adhere to in holding, investing and legally segregating Segregated Customer Margin are critical to its Netting Members' ability to obtain certain relief with respect to these funds. Therefore, the Clearing Agencies believe it is appropriate for these provisions to be described publicly in the GSD Rules, which are published to the DTCC website.[16]

While the manner in which FICC would hold and invest Segregated Customer Margin will primarily be described in the GSD Rules, the proposed changes would incorporate Segregated Customer Margin into the Investment Policy such that the general governance and investment philosophy underpinning the Policy, described in Section 3.1 as ''a prudent and conservative investment philosophy that places highest priority on maximizing liquidity and risk avoidance,'' would apply to these funds.

The proposed changes would amend Section 2 to include a definition of Segregated Customer Margin as having ''the meaning given such term in the GSD Rules.'' The proposed changes would also amend Section 3.2 to include a separate statement that refers to the provisions of the GSD Rules, specifically, but not limited to, Section 1a of GSD Rule 4, which would, following implementation of the changes that were proposed by the Account Segregation Filing, address how FICC would segregate and hold Segregated Customer Margin in compliance with the applicable conditions set forth in Rule 15c3–3 and Rule 15c3–3a.

The proposed changes to the Policy would amend Section 5 to identify Segregated Customer Margin as a source of investable funds and to state that ''Segregated Customer Margin is described in the GSD Rules, including, but not limited to, Section 1a of GSD Rule 4.'' The proposed changes to Section 5 would also clarify the description of ''Participants Fund and Clearing Funds'' to make clear that Segregated Customer Margin is not treated as general FICC Clearing Fund. Finally, the proposed changes would include ''Segregated Customer Margin'' as a separate category of ''Allowable Investments'' in Section 6.1, showing that these funds may only be invested in bank deposits, including a Federal Reserve Bank. Under Section 6.2.1, which describes limits on bank deposit investments, the proposed changes would include a statement that refers back to GSD Rule 4 as describing the manner in which Segregated Customer Margin may be invested and would also provide that higher investment limits may be applied to investments of Segregated Customer Margin.

iii. Clean-Up Proposed Changes

The proposed changes to the Policy would replace references to the ''Management Committee'' with the ''senior most management committee,'' which accurately describes this internal governing body without referring to it by formal name. The DTCC Management Committee is comprised of the executive members of DTCC's management team and is the senior most management committee in the organization. The Policy currently requires that certain actions and authorizations described therein be taken by a member of this body. For example, Section 4.3 of the Policy requires that the establishment of any new investment relationships be authorized by specified persons, which include a member of the Management Committee.

The Management Committee has recently changed its name to the Executive Committee. Therefore, the proposed change to replace the formal name of this body would continue to correctly refer to the group but would ensure that the group continues to be accurately described in the Policy in the event of any future changes to its formal name. The proposed changes would include a new defined term for ''senior most management committee'' in Section 2 to provide clarity that this term is intended to refer to the highest-level committee of DTCC. Conforming

[14] *Supra* note 4.

[15] 17 CFR 240.15c3–3 and 15c3–3a.

[16] *Supra* note 7.

changes would also be made to Section 4.3 (regarding authorization to establish new investment relationships), Section 6.2.3 (regarding authorization of investment transactions in U.S. Treasury securities), Section 6.2.5 (regarding authorization of investment transactions in high-grade corporate debt) and Section 7.2 (regarding authorization to exceed investment limits).

Implementation Timeframe

The Clearing Agencies expect to implement the proposal by no later than March 31, 2025, or such earlier date on which the changes proposed by the Account Segregation Filing are effective.

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency, particularly, Section 17A(b)(3)(F) of the Act [17] and Rule 17ad–22(e)(6)(i) under the Act,[18] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[19]

The investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible. Such protections include, for example, following a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance. The Clearing Agencies believe the proposed changes would allow them to continue to adhere to these guidelines by addressing the segregation, separation and investment of Indirect Participants Clearing Fund Deposits and Segregated Customer Margin, consistent with the changes that were proposed in the Account Segregation Filing. The proposed changes would reflect a prudent and conservative investment philosophy by limiting FICC's ability to hold Segregated Customer Margin in either an account of a Federal Reserve Bank or an FDIC-insured bank. Therefore, the Clearing Agencies believe the proposed rule change would allow the Clearing Agencies to continue to operate the Investment Policy pursuant to a prudent and conservative investment philosophy that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible, consistent with Section 17A(b)(3)(F) of the Act.[20]

The proposed changes to more generally describe the senior most management committee would ensure that the Policy remains clear and accurate in describing the governance around important actions described therein. By creating clearer descriptions, the Clearing Agencies believe these proposed changes would make the Investment Policy more effective in governing the management, custody, and investment of funds of and held by the Clearing Agencies. The Clearing Agencies believe the proposed changes would improve the effectiveness of the Investment Policy and allow the Investment Policy to continue to be administered in alignment with the investment guidelines and governance procedures set forth therein. Given that such guidelines and governance procedures are designed to safeguard funds which are in the custody or control of the Clearing Agencies or for which they are responsible, the Clearing Agencies believe the proposed changes are consistent with Section 17A(b)(3)(F) of the Act.[21]

Rule 17ad–22(e)(6)(i) under the Act requires, in part, FICC to establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[22] As described above, the proposed changes would amend Section 3.2, which describes the separation and segregation of cash deposits to the NSCC, GSD and MBSD Clearing Funds, and the DTC Participants Fund. The proposed changes would specify in this section that Indirect Participants Clearing Fund Deposits shall be held separately and independently on FICC's books and records from all other deposits to the GSD Clearing Fund. Together with the changes to be implemented to the GSD Rules pursuant to the Account Segregation Filing, the proposed changes to the Policy would support FICC's compliance with the requirements of Rule 17ad–22(e)(6)(i) by providing that Indirect Participants Clearing Fund Deposits shall be held separately and independently from margin held for GSD Netting Members' proprietary activity.

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies believe that the proposed revisions to the Investment Policy would not have any impact, or impose any burden, on competition. The Investment Policy applies equally to allowable investments of Clearing Fund and Participants Fund deposits, as applicable, of each member of the Clearing Agencies, and establishes a uniform policy at the Clearing Agencies. The proposed changes to the Investment Policy would not effect any changes on the fundamental purpose or operation of this document and, as such, would also not have any impact, or impose any burden, on competition.

The Clearing Agencies do not believe the proposed rule changes to make clean-up changes to the Policy would impact competition. These changes would ensure the clarity and accuracy of the descriptions in the Policy and would not affect participants' rights and obligations. As such, the Clearing Agencies believe the proposed clean-up changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17ad–22(e)(6)(i).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] *Id.*

[21] *Id.*

[22] 17 CFR 240.17ad–22(e)(6)(i).

should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-regulations/self-regulatory-organization-rulemaking*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2024–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2024–011. 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-regulations/self-regulatory-organization-rulemaking*). 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 DTC and on DTCC's website (*www.dtcc.com/legal/sec-rule-filings*). 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–DTC–2024–011 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29629 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101878; File No. SR–BX–2024–054]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Approach to the Options Regulatory Fee (ORF) in 2025

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2024, Nasdaq BX, Inc. (''BX'' or ''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 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 its Pricing Schedule at Options 7, Section 5, Options Regulatory Fee.[3]

While the changes proposed herein are effective upon filing, the Exchange has designated the 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/bx/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

BX proposes to amend its current ORF in several respects. BX proposes to amend its methodology of collection to: (1) exclude options transactions in proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as ''M'' at The Options Clearing Corporation (''OCC''). Additionally, BX will assess a different rate for trades executed on BX (''Local ORF Rate'') and trades executed on non-BX exchanges (''Away ORF Rate'').

Background on Current ORF

Today, BX assesses its ORF for each Customer[4] option transaction that is

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On October 31, 2024, SR–BX–2024–040 was filed to amend ORF. On December 9, 2024, SR–BX–2024–040 was withdrawn and this rule change was filed. The current proposal amends the ORF Rate for Local Customer ''C'' Origin Code transactions executed on BX, Local Firm ''F'' Origin Code transactions executed on BX, and Away ORF Rate Firm ''F'' Origin Code multi-list transactions executed on non-BX exchanges.

[4] Today, ORF is collected from Customers, Professionals and broker-dealers that are not affiliated with a clearing member that clear in the ''C'' range at OCC. *See supra* notes 13 and 14 for descriptions of Customers and Professionals.

either: (1) executed by a Participant [5] on BX; or (2) cleared by a BX Participant at OCC in the Customer range,[6] even if the transaction was executed by a non-member of BX, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is a BX Participant, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA [8]); and (2) if the OCC clearing member is not a BX Participant, ORF is collected only on the cleared Customer contracts executed at BX, taking into account any CMTA instructions which may result in collecting the ORF from a non-member.[9] The current BX ORF is $0.0005 per contract side.

Today, in the case where a Participant both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Participant. Today, in the case where a Participant executes a transaction and a different Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction and not the Participant who executes the transaction. Today, in the case where a non-member executes a transaction at an away market and a Participant clears the transaction, the ORF will be assessed to and collected from the Participant who clears the transaction. Today, in the case where a Participant executes a transaction on BX and a non-member clears the transaction, the ORF will be assessed to the Participant that executed the transaction on BX and collected from the non-member who cleared the transaction. Today, in the case where a Participant executes a transaction at an away market and a non-member ultimately clears the transaction, the ORF will not be assessed to the Participant who executed the transaction or collected from the non-member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Participant executing the trade at an away market.

ORF Revenue and Monitoring of ORF

Today, the Exchange monitors the amount of revenue collected from the ORF (''ORF Regulatory Revenue'') to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.[10] In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations, and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the total Options Regulatory Costs. Thus, direct expenses would be 65% of total Options Regulatory Costs for 2024.[11]

The ORF is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of its Participants, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal for January 1, 2025

BX has been reviewing it methodologies for the assessment and collection of ORF. As a result of this review, BX proposes to revamp the current process of assessing and collecting ORF in various ways. Below BX will explain the modelling it performed and the outcomes of the modelling which have led the Exchange to propose the below changes.

Effective January 1, 2025, BX proposes to assess ORF to each BX Participant for multi-listed options transactions, excluding options transactions in proprietary products,[12] cleared by OCC in all clearing ranges except market makers who clear as ''M'' at OCC (''Market Makers'') [13] where: (1) the execution occurs on BX or (2) the execution occurs on another exchange and is cleared by a BX Participant. With this change, BX proposes to amend its current ORF to assess ORF on Customer,[14] Professional,[15] Firm [16] and Broker-Dealer [17] transactions. All market participants, except Market Makers, would be subject to ORF.

The ORF would be collected by OCC on behalf of BX from (1) BX clearing members for all Customer, Professional, Firm and Broker-Dealer transactions they clear or (2) non-members for all

[5] The term ''Options Participant'' or ''Participant'' mean a firm, or organization that is registered with the Exchange pursuant to Options 2A of these Rules for purposes of participating in options trading on BX Options as a ''BX Options Order Entry Firm'' or ''BX Options Market Maker.'' *See* Options 1, Section 1(a)(40).

[6] Participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that Participants mark orders with the correct account origin code.

[7] The Exchange uses reports from OCC when assessing and collecting the ORF.

[8] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[9] By way of example, if Broker A, a BX Participant, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by BX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than BX, it was cleared by a BX Participant in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between BX and the transaction. If Broker A was not a BX Participant, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on BX nor was it cleared by a BX Participant.

[10] The regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Participants' options activity (''Options Regulatory Cost'').

[11] Direct and indirect expenses are based on the Exchange's 2024 Regulatory Budget.

[12] Proprietary products are products with intellectual property rights that are not multi-listed. BX has no proprietary products.

[13] Capacity ''M'' covers Market Makers registered on BX and market makers registered at non-BX exchanges.

[14] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(48)). *See* Options 7, Section 1(a).

[15] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants. *See* Options 7, Section 1(a).

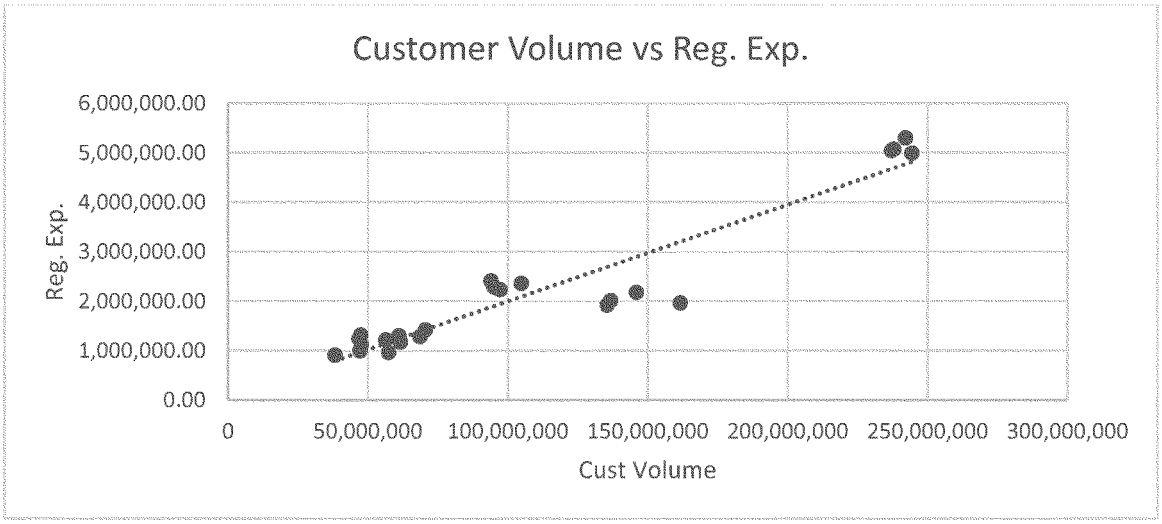
[16] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. *See* Options 7, Section 1(A).

[17] The term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. *See* Options 7, Section 1(a). A Broker-Dealer clears in the ''F'' range at OCC.

Customer, Professional, Firm and Broker-Dealer transactions they clear that were executed on BX. This model collects ORF where there is a nexus with BX and does not collect ORF from a non-member where the transaction takes place away from the Exchange.

Further, effective January 1, 2025, the Exchange proposes to establish a different ORF for trades executed on BX (''Local ORF Rate'') and trades executed on non-BX exchanges (''Away ORF Rate'') by market participants. For Customer, Professional, and broker-dealer (not affiliated with a clearing member) transactions that clear in the ''C'' range at OCC (collectively ''Customers'') the Exchange proposes to assess a Local ORF Rate of $0.0203 per contract and an Away ORF Rate of $0.00 per contract. For Firm and Broker-Dealer transactions that clear in the ''F'' range at OCC (collectively ''Firm and Broker-Dealer Transactions'') the Exchange proposes to assess a Local ORF Rate of $0.00024 per contract and an Away ORF Rate of $0.00024 per contract. The combined amount of Local ORF and Away ORF collected may not exceed 88% of Options Regulatory Cost. BX will ensure that ORF Regulatory Revenue does not exceed Options Regulatory Cost. As is the case today, the Exchange will notify Participants via an Options Trader Alert of these changes at least 30 calendar days prior to January 1, 2025.

The Exchange utilized historical and current data from its affiliated options exchanges to create a new regression model that would tie expenses attributable to regulation to a respective source.[18] To that end, the Exchange plotted Customer volumes from each exchange [19] against Options Regulatory Cost from each exchange for the Time Period. Specifically, the Exchange utilized standard charting functionality to create a linear regression. The charting functionality yields a ''slope'' of the line, representing the marginal cost of regulation, as well as an ''intercept,'' representing the fixed cost of regulation.[20] The Exchange considered using non-linear models, but concluded that the best R^2 (''R-Squared'') [21] results came from a standard y = Mx + B format for regulatory expense. The R-Squared for the below charting method ranged from 85% to 95% historically. As noted, the plots below represent the Time Period. The X-axis reflects Customer volumes by exchange, by quarter and the Y-axis reflects regulatory expense by exchange.



The results of this modelling indicated a high correlation and intercept for the baseline cost of regulating the options market as a whole. Specifically, the regression model indicated that (1) the marginal cost of regulation is easily measurable, and significantly attributable to Customer activity; and (2) the fixed cost of setting up a regulatory regime should arguably be dispersed across the industry so that all options exchanges have substantially similar revenue streams to satisfy the ''intercept'' element of cost. When seeking to offset the ''set-up'' cost of regulation, the Exchange attempted several levels of attribution. The most successful attribution was related to industry wide Firm and Broker-Dealer Transaction volume. Of note, through analysis of the results of this regression model, there was no positive correlation that could be established between Customer away volume and regulatory expense. This led the Exchange to utilize a model with a two-factor regression on a quarterly basis for the last four quarters of volumes relative to the pool of expense data for the six Nasdaq affiliated options exchanges. Once again, standard spreadsheet functionality (including the Data Analysis Packet) was used to determine the mathematics for this model. The results of this two-factor model, which resulted in the attribution of Customer Local ORF and Firm and Broker-Dealer Transaction Local and Away ORF, typically increased the R-Squared (goodness of fit) to >97% across multiple historical periods.[22]

Utilizing the new regression model, and assumptions in the proposal, the model demonstrates that Customer volumes are directly attributable to marginal cost, and also shows that Firm and Broker-Dealer Transaction volumes industry-wide are a valid method (given

[18] This new model seeks to provide a new approach to attributing Options Regulatory Cost to Options Regulatory Expense. In creating this model, the exchange did not rely on data from a single SRO as it had in the past.

[19] The Exchange utilized data from all Nasdaq affiliated options exchanges to create this model from 2023 Q3 through 2024 Q2 (''Time Period'').

[20] The Exchange utilized data from 2023 Q1 to 2024 Q3 to calculate the slope and intercept.

[21] R-Squared is a statistical measure that indicates how much of the variation of a dependent variable is explained by an independent variable in a regression model. The formula for calculating R-squared is: R2 = 1 − Unexplained Variation/Total Variation.

[22] The Exchange notes that various exchanges negotiate their respective contracts independently with FINRA creating some variability. Additionally, an exchange with a floor component would create some variability.

the goodness of fit) to offset the fixed cost of regulation. Applying the regression coefficient values historically, the Exchange established a ''normalization'' by per options exchange. This ''normalization'' encompassed idiosyncratic exchange expense-volume relationships which served to tighten the attributions further while not deviating by more than 30% from the mean for any single options exchange in the model. The primary driver of this need for ''normalization'' are negotiated regulatory contracts that were negotiated at different points in time, yielding some differences in per contract regulatory costs by exchange. Normalization is therefore the average of a given exchange's historical (prior 4 quarters) ratio of regulatory expense to revenue when using the regressed values (for Customer Local ORF and Firm and Broker-Dealer Transaction Local and Away ORF) that yields an effective rate by exchange. The ''normalization'' was then multiplied to a ''targeted collection rate'' of approximately 88% to arrive at ORF rates for Customer, Firm and Broker-Dealer Transactions. Of note, when comparing the ORF rates generated from this method, historically, there appears to be a very tight relationship between the estimated modeled collection and actual expense and the regulatory expenses for that same period. In summary, the model does not appear to increase marginal returns.

One other important aspect of this modeling is the input of Options Regulatory Costs. The Exchange notes that in defining Options Regulatory Costs it accounts for the nexus between the expense and options regulation. By way of example, the Exchange excludes certain indirect expenses such as payroll expenses, accounts receivable, accounts payable, marketing, executive level expenses and corporate systems.

The Exchange would continue to monitor the amount of Options Regulatory Revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. In determining whether an expense is considered an Options Regulatory Cost, the Exchange would continue to review all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost. Participants will continue to be provided with 30 calendar day notice of any change to ORF.

As is the case today, ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange for the supervision and regulation of Participants' transactions, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. As discussed above, Options Regulatory Costs include direct regulatory expenses [23] and certain indirect expenses in support of the regulatory function.[24]

Finally, the Exchange notes that this proposal will be sunset on July 1, 2025, at which point the Exchange would revert back to the ORF methodology and rate ($0.0005 per contract side) that was in effect prior to this rule change.[25]

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.[26] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[27] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Proposal for January 1, 2025

The Exchange believes the proposed ORF to be assessed on January 1, 2025, is reasonable, equitable and not unfairly discriminatory for various reasons. First, as of January 1, 2025, the Exchange would expand the collection of ORF to all clearing ranges, except Market Makers, provided the transaction was executed by an BX Participant or cleared by an BX Participant. With this amendment, BX would begin to assess Firm and Broker-Dealer Transactions an ORF, provided the transactions were executed by a BX Participant or cleared by a BX Participant, except transactions in proprietary products. Second, as of January 1, 2025, the Exchange would assess different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firms and Broker-Dealer Transactions. Third, as of January 1, 2025, the combined amount of Local ORF and Away ORF collected would not exceed 88% of Options Regulatory Cost as all Participants, except Market Makers, would be assessed ORF.

The Exchange believes that assessing all Participants, except Market Makers, an ORF is reasonable, equitable and not unfairly discriminatory. While the Exchange acknowledges that there is a cost to regulate Market Makers, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Lead Market Makers are obligated to quote intra-day.[29] Additionally, Market Makers are required to quote intra-day.[30] Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[31] Lead Market Makers and Market Makers are critical market participants in that they are the only market participants that are required to provide liquidity to BX and are necessary for opening the market. Excluding Market Maker transactions from ORF allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on BX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may

[23] The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations, and examinations.

[24] The indirect expenses include support from such areas as Office of the General Counsel, technology, finance, and internal audit.

[25] The Exchange proposes to reconsider the sunset date in 2025 and determine whether to proceed with the proposed ORF structure at that time.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* BX Options 2, Section 4(j).

[30] *See* BX Options 2, Section 5(d).

[31] *See* BX Options 2, Section 4(a)(3) and (5).

transact orders in addition to submitting quotes on the Exchange. This proposal would except orders submitted by Market Makers, in addition to quotes, for purposes of ORF. Market Makers utilize orders in their assigned options series to sweep the order book. The Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap [32] and therefore de minimis.

The Exchange believes excluding options transactions in proprietary products is reasonable, equitable and not unfairly discriminatory because BX does not list any proprietary products. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF for those products. BX notes that there are a small number of proprietary products transacted as compared to multi-list options. BX's focus is on surveillance related to multi-listed options. Should BX list a proprietary product in the future, BX would amend its ORF to collect a Local ORF on that proprietary product.

The Exchange believes that assessing different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firm and Broker-Dealer Transactions and collecting no more than 88% of Options Regulatory Cost is reasonable, equitable and not unfairly discriminatory. Customer transactions account for a material portion of BX's Options Regulatory Cost.[33] Customer transactions in combination with Firm and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. Therefore, the Exchange believes that 88% of Options Regulatory Cost is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Cost borne by the Exchange. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm and Broker-Dealer Transactions.[34] For these reasons, regulating Customer trading activity is ''much more labor-intensive'' and therefore, more costly. The Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Participants of the Exchange and is not readily available to BX.[35] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Utilizing the new regression model, and assumptions in the proposal, it appears that BX's Customer regulation occurs to a large extent on Exchange. Utilizing the new regression model, and assumptions in the proposal, the Exchange does not believe that significant Options Regulatory Costs should be attributed to Customers for activity that may occur across options markets. To that end, with this proposal, the Exchange would assess Customers a Local ORF, but not an Away ORF rate.

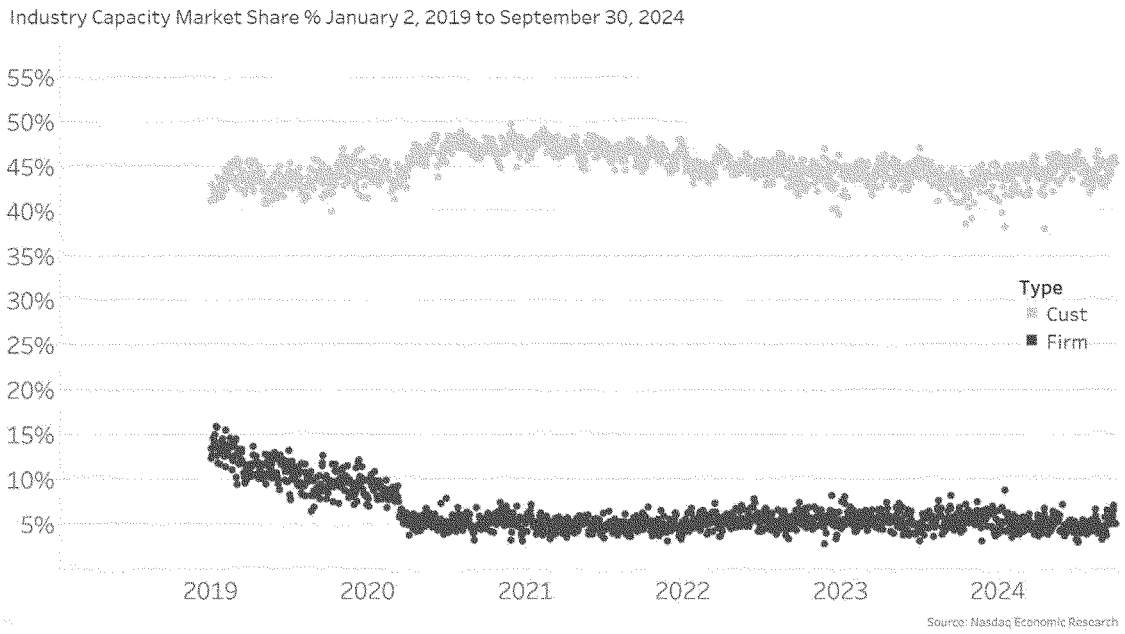
In contrast, the Options Regulatory Cost of regulating Firm and Broker-Dealer Transactions is materially less than the Options Regulatory Costs of regulating Customer transactions, as explained above. The below chart derived from OCC data reflects the percentage of transactions by market participant.

[29] *See* BX Options 2, Section 4(j).

[30] *See* BX Options 2, Section 5(d).

[31] *See* BX Options 2, Section 4(a)(3) and (5).

[32] *See* BX Options 2, Section 6(b). The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.



With this model, the addition of Firm and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. As these market participants are more sophisticated, the Exchange notes that there are not the same protections in place for Firm and Broker-Dealer Transactions as compared to Customer transactions. Therefore, with the proposed model, the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. However, the Exchange notes that it appears from the new regression model and assumptions in the proposal, that unlike Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm and Broker-Dealer Transactions both a Local ORF and an Away ORF in contrast to Customer transactions that would only be assessed a Local ORF. The Exchange believes that not assessing Market Maker transactions an ORF permits these market participants to utilize their resources to quote tighter in the market. Tighter quotes benefits Customers as well as other market participants who interact with that liquidity.

The Exchange's proposal to establish both a Local ORF Rate and an Away ORF Rate and allocate the portion of Options Regulatory Cost differently between the two separate rates, by market participant, ensures that the Local ORF Rate and Away ORF Rate reflect the amount of Options Regulatory Costs associated with different types of surveillances and are reasonable, equitable and not unfairly discriminatory. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess only Firm and Broker-Dealer Transactions an Away ORF. With this model, while the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, it occurs both on the Exchange and across options markets.[36] The Exchange believes that assessing the Firm and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Participants combined with the activity that is required to be regulated both on the Exchange and across options markets. The Exchange notes that there are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm and Broker-Dealer Participants.[37] While not large in number, when compared to the overall number of Exchange rules that are surveilled by BX for on-Exchange activity, the Away ORF that would be assessed to Firm and Broker-Dealer regulation would account for those costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-BX exchanges avoids overlapping ORFs that would otherwise be assessed by BX and other options exchanges that also assess an ORF. Also, the Exchange's proposal continues to ensure that Options Regulatory Revenue, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. Fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

Capping the combined amount of Local ORF and Away ORF collected at 88% of Options Regulatory Cost commencing January 1, 2025, is reasonable, equitable and not unfairly discriminatory as given these factors. The Exchange will review the ORF Regulatory Revenue at the end of January 2025 and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds its projections.[38]

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 intra-market competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to ORF do not impose an undue burden on inter-

[36] BX pays the Financial Industry Regulatory Authority (''FINRA'') to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail (''CAT'') data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

[37] BX conducts surveillances and enforces BX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some BX trading rules are automatically enforced by BX's System.

[38] BX would submit a rule change to the Commission to amend ORF rates.

market competition because ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange notes, however, the proposed change is not designed to address any competitive issues. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Cost.

Proposal for January 1, 2025

Excluding Market Makers does not impose an undue burden on intra-market competition because, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Lead Market Makers are obligated to quote intra-day.[39] Additionally, Market Makers are required to quote intra-day.[40] Further, unlike other market participants, Lead Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[41] Lead Market Makers and Market Makers are critical market participants in that they are the only market participants that are required to provide liquidity to BX and are necessary for opening the market. Excluding Market Maker transactions from ORF does not impose an intra-market burden on competition, rather it allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on BX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders on the Exchange in addition to submitting quotes. The Exchange's proposal to except orders submitted by Market Makers, in addition to quotes, for purposes of ORF does not impose an undue burden on intra-market competition because Market Makers utilize orders in their assigned options series to sweep the order book. Further, the Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap[42] and therefore de minimis.

Uniformly excluding options transactions in proprietary products from ORF for all BX Participants does not impose an undue burden on intra-market competition. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF for those products. There are a small number of proprietary products transacted as compared to multi-list options. Also, proprietary products are transacted on a limited number of options exchanges and would require a de minimis amount of cross market surveillance, for these reasons the Exchange believes that only a Local ORF should be applied to the extent that BX were to list a proprietary product. BX's focus is on surveillance related to multi-listed options. Should BX list a proprietary product in the future, BX would amend its ORF to collect a Local ORF on that proprietary product.

The Exchange's proposal to expand the clearing ranges to specifically include Firm and Broker-Dealer Transactions, in addition to Customer and Professional transactions, as of January 1, 2025, does not impose an undue burden on intra-market competition as Customer transactions account for a material portion of BX's Options Regulatory Cost.[43] Customer transactions in combination with Firm and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm and Broker-Dealer Transactions.[44] For these reasons, regulating Customer trading activity is ''much more labor-intensive'' and therefore, more costly. Further, the Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Participants of the Exchange and is not readily available to BX.[45] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Not attributing significant Options Regulatory Costs to Customers for activity that may occur across options markets does not impose an undue burden on intra-market competition because the data in the regression model demonstrates that BX's Customer regulation occurs to a large extent on Exchange.

The Exchange believes that assessing Firm and Broker-Dealer Transactions a different ORF and assessing both a Local ORF and an Away ORF to these transactions does not impose an undue

[39] *See* BX Options 2, Section 4(j).

[40] *See* BX Options 2, Section 5(d).

[41] *See* BX Options 2, Section 4(a)(3) and (5).

[42] *See* BX Options 2, Section 6(b). The total number of contracts executed by a Market Maker in options in which it is not registered as a Market Maker shall not exceed 25 percent of the total number of all contracts executed by the Market Maker in any calendar quarter.

[43] The Exchange notes that the regulatory costs relating to monitoring Participants with respect to Customer trading activity are generally higher than the regulatory costs associated with Participants that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Participants that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Participant's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

[44] *See* BX Options 10 Rules.

[45] The Know Your Customer or ''KYC'' provision is the obligation of the broker-dealer.

burden on intra-market competition because the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. With this model, the addition of Firm and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. Unlike Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm and Broker-Dealer Transactions both a Local ORF and an Away ORF.

The Exchange's proposal to allocate the portion of costs differently between the Local ORF and Away ORF does not create an undue burden on intra-market competition. The Exchange believes that each rate reflects the amount of Options Regulatory Costs associated with different types of surveillances and does not create an undue burden on competition as BX Participants, excluding except Market Makers, would be uniformly assessed either a Local ORF Rate or an Away ORF Rate depending on where the transaction occurred and whether the transaction was executed or cleared by an BX Participant. Also, the Exchange would uniformly assess the Local ORF Rate and an Away ORF Rate by market participant. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets.

The Exchange believes that assessing only Firm and Broker-Dealer Transactions an Away ORF does not create an undue burden on intra-market competition because while the regulation of Firm and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, the regulation of Firm and Broker-Dealer Transactions occurs both on the Exchange and across options markets.[46] The Exchange believes that assessing Firm and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Participants combined with the activity that is required to be regulated both on the Exchange and across options markets. There are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm and Broker-Dealer Participants.[47] While not large in number, when compared to the overall number of Exchange rules that are surveilled by BX for on-Exchange activity, the Away ORF that would be assessed to Firm and Broker-Dealer Transactions would account for those Options Regulatory Costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-BX exchanges does not impose a burden on intra-market competition, rather it avoids overlapping ORFs that would otherwise be assessed by BX and other options exchanges that also assess an ORF. With this model, Customer transactions would be assessed a higher Local ORF, while not being assessed an Away ORF as compared to Firm and Broker-Dealer Transactions. The Exchange believes that this difference in allocation is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Costs borne by different Participants of the Exchange in light of the volume different Participants transact on the Exchange.

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[48] and Rule 19b–4(f)(2)[49] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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–BX–2024–054 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–BX–2024–054. 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–BX–2024–054 and should be submitted on or before January 7, 2025.

[46] BX pays the Financial Industry Regulatory Authority (''FINRA'') to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail (''CAT'') data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

[47] BX conducts surveillances and enforces BX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some BX trading rules are automatically enforced by BX's System.

[48] 15 U.S.C. 78s(b)(3)(A)(ii).

[49] 17 CFR 240.19b–4(f)(2).

[50] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29625 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101880; File No. SR–FICC–2024–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to the Adoption of a Trade Submission Requirement

December 11, 2024.

On June 12, 2024, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FICC–2024–009 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The notice of filing of the proposed rule change was published for comment in the **Federal Register** on July 1, 2024.[3] On August 16, 2024, the Commission extended the review period of the proposed rule change, pursuant to section 19(b)(2) of the Act,[4] by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received comments regarding the proposed rule change.[6]

On October 2, 2024, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,[7] to determine whether to approve or disapprove the proposed rule change.[8] On September 24, 2024, FICC filed Partial Amendment No. 1 to make clarifications and corrections to the proposed rule change.[9] The Commission published notice of Partial Amendment No. 1 in the **Federal Register** on October 21, 2024.[10] The proposed rule change, as modified by Partial Amendment No. 1, is referred to herein as the ''Proposed Rule Change.''

Section 19(b)(2) of the Exchange Act[11] provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[12] The 180th day after publication of the Notice of Filing in the **Federal Register** is December 28, 2024.

The Commission is extending the period for Commission action on the Proposed Rule Change, as modified by Partial Amendment No. 1. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Exchange Act,[13] the Commission designates February 26, 2025, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR–FICC–2024–009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29627 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 100417 (June 25, 2024), 89 FR 54602 (July 1, 2024) (File No. SR–FICC–2024–009) (''Notice of Filing'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 100693 (Aug. 12, 2024), 89 FR 66746 (Aug. 16, 2024) (File No. SR–FICC–2024–009).

[6] Comments on the Proposed Rule Change are *available at https://www.sec.gov/comments/sr-ficc-2024-009/srficc2024009.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Securities Exchange Act Release No. 101194 (Sept. 26, 2024), 89 FR 80296 (Oct. 2, 2024) (SR–FICC–2024–009).

[9] Text of the proposed changes made by the Partial Amendment No. 1 to the Proposed Rule Change is *available at https://www.sec.gov/comments/sr-ficc-2024-009/srficc2024009-524075-1504142.pdf.*

[10] Securities Exchange Act Release No. 101340 (Oct. 15, 2024), 89 FR 84211 (Oct. 21, 2024) (File No. SR–FICC–2024–009) (''Notice of Amendment No. 1'').

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C 78s(b)(2)(B)(ii)(II).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101887; File No. SR–BX–2024–055]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Fees Based on the Rate of Inflation

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2024, Nasdaq BX, Inc. (''BX'' 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/bx/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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adjust market data fees for inflation, to be operative on January 1, 2025.

Many market data fees have not changed for years. 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.[3]

The proposed fee increases will apply to three types of products: (i) Market Data Distributor Fees; (ii) BX TotalView; and (iii) Distribution Models. 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

BX 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 increases in the amount of information processed, coupled with the need to maintain infrastructure in a high fixed cost environment. The following message rate metrics for depth of book data illustrate changes in system demand over time:

- Peak Rate by Millisecond: up approximately 14%
- Average Rate per Millisecond: up approximately 15%
- Peak Rate per Second: down approximately 28%
- Average Rate per Second: down approximately 41%
- Peak Total Messages: up approximately 143%
- Average Total Messages: up approximately 50%
- Average Daily Volume: down approximately 87%
- Maximum Message Count: up approximately 143%

With this increase in message traffic and need to maintain infrastructure, 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 metrics[4] illustrate the increase in message processing speed:

- Median: down approximately 26%
- Average: down approximately 36%
- Max: down approximately 46%

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.[5] 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.[6]

About 10,000 PPIs for individual products and groups of products are tracked and released each month.[7] 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.[8] 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.''[9]

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

[3] This proposal will adjust for inflation up to August 2024. Depending on inflation thereafter, further adjustments may, or may not, be necessary.

[4] These measurements compare the time difference between events on the matching engine and the time these events are published.

[5] *See https://fred.stlouisfed.org/series/PCU51825182#0.*

[6] *See https://www.bls.gov/ppi/overview.htm.*

[7] *See https://www.bls.gov/ppi/overview.htm.*

[8] NAICS appears in table 5 of the PPI Detailed Report and is available at *https://data.bls.gov/timeseries/PCU518210518210.*

[9] *See https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm.*

customers' transactions in U.S. equity securities.[10]

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.[11]

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.[12] This calculation was repeated for each market data fee.

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
Market Data Distributor Fees						
Monthly Direct Access Fee	$1,000	$1,070	$1,120	$1,150	[13] 1/1/2010	[14] 15.0
Monthly Internal Distributor Fee	750	784	810	824	[15] 12/1/2016	10.0
Monthly External Distributor Fee	1,500	1,570	1,620	1,649	[16] 12/1/2016	[17] 9.9
BX TotalView						
Subscriber fee (Nasdaq)	20	21.25	22.25	23.00	[18] 4/1/2010	[19] 15.0
Subscriber fee (Non-Nasdaq)	20	21.25	22.25	23.00	[20] 4/1/2010	[21] 15.0
Non-Display Direct Access	55	57.00	58.50	59.50	[22] 1/1/2018	[23] 8.2
Enterprise License	20,000	20,790	21,400	21,747	[24] 1/1/2018	8.7
Distribution Models						
Managed Data Solutions Admin	1,500	1,590	1,660	1,686	[25] 1/1/2016	12.4
Managed Data Solutions Subscriber	150	159	166	168	[26] 1/1/2016	[27] 12.0

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[29] 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.

[10] 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.

[11] *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).

[12] 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 exceed the rate of inflation, the Exchange rounded downward.

[13] *See* Securities Exchange Act Release No. 59307 (January 28, 2009), 74 FR 6069 (February 4, 2009) (SR–BX–2009–005).

[14] The change as calculated by the Data Processing PPI index is 15.1%. The actual change is 15.0% due to rounding of the fee.

[15] *See* Securities Exchange Act Release No. 79690, (December 23, 2016), 81 FR 96527 (December 30, 2016) (SR–BX–2016–073).

[16] *See id.*

[17] The change as calculated by the Data Processing PPI index is 10.0%. The actual change is 9.9% due to rounding of the fee.

[18] *See* Securities Exchange Act Release No. 25014 (May 6, 2010), 75 FR 25014 (May 6, 2010) (SR–BX–2010–027).

[19] The change as calculated by the Data Processing PPI index is 15.1%. The actual change is 15.0% due to rounding of the fee.

[20] *See* Securities Exchange Act Release No. 25014 (May 6, 2010), 75 FR 25014 (May 6, 2010) (SR–BX–2010–027).

[21] The change as calculated by the Data Processing PPI index is 15.1%. The actual change is 15.0% due to rounding of the fee.

[22] *See* Securities Exchange Act Release No. 82567 (January 23, 2018), 83 FR 4092 (January 29, 2018) (SR–BX–2018–005).

[23] The change as calculated by the Data Processing PPI index is 8.7%. The actual change is 8.2% due to rounding of the fee.

[24] *See* Securities Exchange Act Release No. 82567 (January 23, 2018), 83 FR 4092 (January 29, 2018) (SR–BX–2018–005).

[25] *See* Securities Exchange Act Release No. 76796 (December 30, 2015), 81 FR 555 (January 6, 2016) (SR–BX–2015–084).

[26] *See id.*

[27] The change as calculated by the Data Processing PPI index is 12.4%. The actual change is 12.0% due to rounding of the fee.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(4) and (5).

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 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%.[30] Using the more targeted inflation number of Data Processing PPI, the cumulative inflation rate was 8.07%.[31] 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.

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.[32]

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–BX–2024–055 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.

[30] *See https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1.*

[31] *See https://data.bls.gov/timeseries/PCU518210518210.*

[32] 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to file number SR–BX–2024–055. 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–BX–2024–055 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29633 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101885; File No. SR–NSCC–2024–010]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Clearing Agency Investment Policy

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2024, National Securities Clearing Corporation (''NSCC'') 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 clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Investment Policy (''Investment Policy'', or ''Policy'') of NSCC and its affiliates, Fixed Income Clearing Corporation (''FICC'') and The Depository Trust Company (''DTC,'' and together with NSCC and FICC, the ''Clearing Agencies'')[3] and would facilitate changes to the FICC Government Securities Division Rulebook (''GSD Rules'') that will be implemented by FICC.[4]

Specifically, as described in greater detail in the Account Segregation Filing, FICC will implement changes to the GSD Rules that will, among other things, provide for FICC to (1) hold margin collected with respect to the proprietary transactions of a Netting Member separately and independently from the margin collected with respect to transactions that a Netting Member submits to FICC on behalf of indirect participants, (2) legally segregate certain margin collected with respect to indirect participant transactions from the margin for a Netting Member's proprietary transactions (as well as those of other indirect participants), and (3) limit investments of certain margin collected with respect to indirect participant transactions to only U.S. Treasuries with a maturity date of one year or less. The Clearing Agencies are proposing to amend the Policy to facilitate implementation of these changes and would also make other clean-up changes to the Policy, as described in greater detail below.

The changes that were proposed in the Account Segregation Filing and the changes proposed to the Investment Policy herein are collectively designed to comply with certain requirements of Rule 17ad–22(e)(6)(i) under the Act,[5] and to ensure that FICC has appropriate rules to satisfy certain conditions of Note H to Rule 15c3–3a under the Act for a broker-dealer to record a debit in the customer and broker-dealer proprietary account reserve formulas.[6]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Investment Policy governs the management, custody and investment of cash deposited to the respective NSCC and FICC Clearing Funds, and the DTC Participants Fund,[7] the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules. In doing this, the Investment Policy identifies the guiding principles for investments and defines the roles and responsibilities of DTCC[8] staff in administering the Investment Policy pursuant to those principles. The guiding principles for investments set forth in Section 3 of the Investment Policy address, among other things, how

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79528 (Dec. 12, 2016), 81 FR 91232 (Dec. 16, 2016) (SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003).

[4] *See* Securities Exchange Act Release No. 101695 (Nov. 21, 2024), 89 FR 93763 (Nov. 27, 2024) (SR–FICC–2024–007) (''Account Segregation Filing''). The changes proposed in the Account Segregation Filing are expected to be implemented by no later than March 31, 2025, on a date to be announced by an Important Notice posted to FICC's website. Terms not defined herein are defined in the GSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[5] 17 CFR 240.17ad–22(e)(6)(i). *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (''Adopting Release,'' and the rules adopted therein referred to herein as ''Treasury Clearing Rules'').

[6] 17 CFR 240.15c3–3a, Note H. *See id.*

[7] The respective Clearing Funds of NSCC, FICC's GSD and FICC's MBSD, and the DTC Participants Fund are described further in the Rules & Procedures of NSCC (''NSCC Rules''), the DTC Rules, By-laws and Organization Certificate (''DTC Rules''), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD Rules'') or the GSD Rules, respectively, *available at http://dtcc.com/legal/rules-and-procedures. See* Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules, and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

[8] The Depository Trust & Clearing Corporation (''DTCC'') is the parent company of the Clearing Agencies.

the Clearing Agencies segregate and separately hold cash deposited to the NSCC Clearing Fund, the Clearing Fund of FICC's Government Securities Division (''GSD''), the Clearing Fund of FICC's Mortgage-Backed Securities Division (''MBSD'') and the DTC Participants Fund. The Investment Policy also identifies sources of funds that may be invested, and the permitted investments of those funds, including the authority required to make such investments and the parameters of, and limitations on, each type of investment.

The Commission recently adopted amendments to Rule 17ad–22(e)(6)(i) under the Act that are applicable to FICC as a covered clearing agency that provides, through GSD, central counterparty services for transactions in U.S. Treasury securities.[9] These amendments require, among other things, that FICC hold margin from a direct participant for its proprietary transactions separately and independently from the margin calculated and collected for the transactions of an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[10]

In the Treasury Clearing Rules, the Commission also amended its customer protection rule (''Rule 15c3–3'') [11] and the reserve formulas thereunder (''Rule 15c3–3a''),[12] to permit broker-dealers to include margin required and on deposit at FICC as a debit item in the reserve formula under certain conditions. One of the conditions for the relief is that the margin be collected in accordance with the GSD Rules that impose certain requirements, which include, among other things, that FICC (i) only invest cash margin in U.S. Treasuries with a maturity of one year or less, and (ii) must hold the margin itself or at an account of a Federal Reserve Bank or an FDIC-insured bank, which account must be segregated from any other account of FICC or any other person at a U.S. Federal Reserve Bank or FDIC-insured bank and used exclusively to hold customer assets to meet the current margin requirements of FICC resulting from positions in U.S. Treasury securities of the customers of the broker-dealer members of FICC.[13]

In the Account Segregation Filing, FICC proposed changes to the GSD Rules to comply with the requirements of the Treasury Clearing Rules. Such changes are expected to be implemented in the GSD Rules by no later than March 31, 2025 and will, among other things, (1) provide for FICC to calculate, collect, and hold margin for the proprietary transactions of a Netting Member separately and independently from the margin for transactions that the Netting Member submits to FICC on behalf of indirect participants, and (2) allow Netting Members to elect for margin for indirect participant transactions to be calculated on a gross basis (*i.e.,* an indirect participant-by-indirect participant basis) and legally segregated from the margin for the Netting Member's proprietary transactions (as well as those of other indirect participants).[14]

The proposed changes to the Investment Policy would facilitate the implementation of the changes that will be made to the GSD Rules pursuant to the Account Segregation Filing, as described in greater detail below.

i. Separately Holding Indirect Participant Margin

First, the proposed changes to the Investment Policy would facilitate the implementation of the changes to the GSD Rules that will require FICC to calculate, collect, and hold margin for the proprietary transactions of a GSD Netting Member separately and independently from margin collected with respect to transactions that a Netting Member submits to FICC on behalf of indirect participants.

The proposed changes to the Policy would do this by first amending Section 2 to include a definition of Indirect Participants Clearing Fund Deposits to mean ''the total amount deposited in the GSD Clearing Fund to support activity in Agent Clearing Member Omnibus Accounts and Sponsoring Member Omnibus Accounts, other than Segregated Indirect Participants Accounts, as such terms are defined in the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'').'' Next, the proposed changes would amend Section 3.2 (Section 3 describes the guiding principles that underpin the Policy) regarding the separation and segregation of cash deposits to the NSCC, GSD and MBSD Clearing Funds, and the DTC Participants Fund. Within this section, the proposed changes would specify that Indirect Participants Clearing Fund Deposits shall be held separately and independently on FICC's books and records from all other deposits to the GSD Clearing Fund.

In connection with this change, the proposed changes to the Policy would also amend Section 5, which describes investable funds that are invested by the Clearing Agencies pursuant to the Policy. The changes to this section would provide that Indirect Participants Clearing Fund Deposits are included in the GSD Clearing Fund. This proposed change would clarify that these funds are considered investable funds under the Policy, to be invested similarly to other cash deposits to the GSD Clearing Fund.

ii. Legally Segregating and Limiting Investments of Segregated Customer Margin

Second, the proposed changes to the Investment Policy would facilitate implementation of the changes that will be made to the GSD Rules pursuant to the Account Segregation Filing that will require FICC to legally segregate certain Indirect Participants Clearing Fund Deposits that have been designated by GSD Netting Members for such segregation (''Segregated Customer Margin''), and to hold and invest such funds in a manner that meets the conditions set forth in the Commission's amendments to Rule 15c3–3 and Rule 15c3–3a.[15]

The GSD Rules will describe the manner in which FICC will meet the requirements of Rule 15c3–3 and Rule 15c3–3a with respect to Segregated Customer Margin. The standards that FICC must adhere to in holding, investing and legally segregating Segregated Customer Margin are critical to its Netting Members' ability to obtain certain relief with respect to these funds. Therefore, the Clearing Agencies believe it is appropriate for these provisions to be described publicly in the GSD Rules, which are published to the DTCC website.[16]

While the manner in which FICC would hold and invest Segregated Customer Margin will primarily be described in the GSD Rules, the proposed changes would incorporate Segregated Customer Margin into the Investment Policy such that the general governance and investment philosophy underpinning the Policy, described in Section 3.1 as ''a prudent and conservative investment philosophy that places highest priority on maximizing liquidity and risk avoidance,'' would apply to these funds.

The proposed changes would amend Section 2 to include a definition of Segregated Customer Margin as having ''the meaning given such term in the

[9] 17 CFR 240.17ad–22(e)(6)(i).

[10] *Id.*

[11] 17 CFR 240.15c3–3.

[12] 17 CFR 240.15c3–3a.

[13] *Id.*

[14] *Supra* note 4.

[15] 17 CFR 240.15c3–3 and 15c3–3a.

[16] *Supra* note 7.

GSD Rules.'' The proposed changes would also amend Section 3.2 to include a separate statement that refers to the provisions of the GSD Rules, specifically, but not limited to, Section 1a of GSD Rule 4, which would, following implementation of the changes that were proposed by the Account Segregation Filing, address how FICC would segregate and hold Segregated Customer Margin in compliance with the applicable conditions set forth in Rule 15c3–3 and Rule 15c3–3a.

The proposed changes to the Policy would amend Section 5 to identify Segregated Customer Margin as a source of investable funds and to state that ''Segregated Customer Margin is described in the GSD Rules, including, but not limited to, Section 1a of GSD Rule 4.'' The proposed changes to Section 5 would also clarify the description of ''Participants Fund and Clearing Funds'' to make clear that Segregated Customer Margin is not treated as general FICC Clearing Fund. Finally, the proposed changes would include ''Segregated Customer Margin'' as a separate category of ''Allowable Investments'' in Section 6.1, showing that these funds may only be invested in bank deposits, including a Federal Reserve Bank. Under Section 6.2.1, which describes limits on bank deposit investments, the proposed changes would include a statement that refers back to GSD Rule 4 as describing the manner in which Segregated Customer Margin may be invested and would also provide that higher investment limits may be applied to investments of Segregated Customer Margin.

iii. Clean-Up Proposed Changes

The proposed changes to the Policy would replace references to the ''Management Committee'' with the ''senior most management committee,'' which accurately describes this internal governing body without referring to it by formal name. The DTCC Management Committee is comprised of the executive members of DTCC's management team and is the senior most management committee in the organization. The Policy currently requires that certain actions and authorizations described therein be taken by a member of this body. For example, Section 4.3 of the Policy requires that the establishment of any new investment relationships be authorized by specified persons, which include a member of the Management Committee.

The Management Committee has recently changed its name to the Executive Committee. Therefore, the proposed change to replace the formal name of this body would continue to correctly refer to the group but would ensure that the group continues to be accurately described in the Policy in the event of any future changes to its formal name. The proposed changes would include a new defined term for ''senior most management committee'' in Section 2 to provide clarity that this term is intended to refer to the highest-level committee of DTCC. Conforming changes would also be made to Section 4.3 (regarding authorization to establish new investment relationships), Section 6.2.3 (regarding authorization of investment transactions in U.S. Treasury securities), Section 6.2.5 (regarding authorization of investment transactions in high-grade corporate debt) and Section 7.2 (regarding authorization to exceed investment limits).

Implementation Timeframe

The Clearing Agencies expect to implement the proposal by no later than March 31, 2025, or such earlier date on which the changes proposed by the Account Segregation Filing are effective.

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency, particularly, Section 17A(b)(3)(F) of the Act [17] and Rule 17ad–22(e)(6)(i) under the Act,[18] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[19]

The investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible. Such protections include, for example, following a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance. The Clearing Agencies believe the proposed changes would allow them to continue to adhere to these guidelines by addressing the segregation, separation and investment of Indirect Participants Clearing Fund Deposits and Segregated Customer Margin, consistent with the changes that were proposed in the Account Segregation Filing. The proposed changes would reflect a prudent and conservative investment philosophy by limiting FICC's ability to hold Segregated Customer Margin in either an account of a Federal Reserve Bank or an FDIC-insured bank. Therefore, the Clearing Agencies believe the proposed rule change would allow the Clearing Agencies to continue to operate the Investment Policy pursuant to a prudent and conservative investment philosophy that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible, consistent with Section 17A(b)(3)(F) of the Act.[20]

The proposed changes to more generally describe the senior most management committee would ensure that the Policy remains clear and accurate in describing the governance around important actions described therein. By creating clearer descriptions, the Clearing Agencies believe these proposed changes would make the Investment Policy more effective in governing the management, custody, and investment of funds of and held by the Clearing Agencies. The Clearing Agencies believe the proposed changes would improve the effectiveness of the Investment Policy and allow the Investment Policy to continue to be administered in alignment with the investment guidelines and governance procedures set forth therein. Given that such guidelines and governance procedures are designed to safeguard funds which are in the custody or control of the Clearing Agencies or for which they are responsible, the Clearing Agencies believe the proposed changes are consistent with Section 17A(b)(3)(F) of the Act.[21]

Rule 17ad–22(e)(6)(i) under the Act requires, in part, FICC to establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[22] As described above, the proposed changes would amend Section 3.2, which describes the separation and

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17ad–22(e)(6)(i).

[19] 15 U.S.C. 78q–1(b)(3)(F).

[20] *Id.*

[21] *Id.*

[22] 17 CFR 240.17ad–22(e)(6)(i).

segregation of cash deposits to the NSCC, GSD and MBSD Clearing Funds, and the DTC Participants Fund. The proposed changes would specify in this section that Indirect Participants Clearing Fund Deposits shall be held separately and independently on FICC's books and records from all other deposits to the GSD Clearing Fund. Together with the changes to be implemented to the GSD Rules pursuant to the Account Segregation Filing, the proposed changes to the Policy would support FICC's compliance with the requirements of Rule 17ad–22(e)(6)(i) by providing that Indirect Participants Clearing Fund Deposits shall be held separately and independently from margin held for GSD Netting Members' proprietary activity.

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies believe that the proposed revisions to the Investment Policy would not have any impact, or impose any burden, on competition. The Investment Policy applies equally to allowable investments of Clearing Fund and Participants Fund deposits, as applicable, of each member of the Clearing Agencies, and establishes a uniform policy at the Clearing Agencies. The proposed changes to the Investment Policy would not effect any changes on the fundamental purpose or operation of this document and, as such, would also not have any impact, or impose any burden, on competition.

The Clearing Agencies do not believe the proposed rule changes to make clean-up changes to the Policy would impact competition. These changes would ensure the clarity and accuracy of the descriptions in the Policy and would not affect participants' rights and obligations. As such, the Clearing Agencies believe the proposed clean-up changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-regulations/self-regulatory-organization-rulemaking*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2024–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2024–010. 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-regulations/self-regulatory-organization-rulemaking*). 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 NSCC and on DTCC's website (*www.dtcc.com/legal/sec-rule-filings*). 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–NSCC–2024–010 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29631 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101884; File No. 10–247]

MX2 LLC; Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

December 11, 2024.

On September 19, 2024, MX2 LLC (''MX2'') filed with the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange under Section 6 of the Exchange Act. On November 29, 2024, MX2 submitted Amendment No. 1 to its Form 1

[23] 17 CFR 200.30–3(a)(12).

application.[1] MX2's Form 1 application, as amended, provides detailed information on how it proposes to satisfy the requirements of the Exchange Act.

The Commission is publishing this notice to solicit comments on MX2's Form 1 application. The Commission will take any comments it receives into consideration in making its determination about whether to grant MX2's request to register as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to MX2 are satisfied.[2]

With respect to governance, MX2 would be a subsidiary of its parent company, MEMX Holdings, LLC (''MEMX Holdings''), which would directly hold 100% of the equity of MX2. MEMX Holdings is the parent company of MX2's affiliate, MEMX LLC, which operates a registered national securities exchange. The governing documents for MX2 can be found in Exhibit A to MX2's Form 1 application, and a listing of the officers and directors of MX2 can be found in Exhibit J. The governing documents for MEMX Holdings can be found in Exhibit C to MX2's Form 1 application.

With respect to its trading system, the Form 1 application provides that MX2 would operate a fully automated electronic trading platform for the trading of NMS stocks with a continuous automated matching function. MX2 would not maintain a physical trading floor. Liquidity would be derived from orders to buy and orders to sell submitted to MX2 electronically by its registered broker-dealer members from remote locations. MX2 would have one class of membership open to registered broker-dealers, and also would allow members to register under MX2 rules as market makers on MX2 and be subject to certain specified requirements and obligations set forth in MX2's proposed rules. According to MX2, it ''intends for its System to be relatively simple, without many of the complex order types or instructions available on other national securities exchanges.'' [3]

A more detailed description of the manner of operation of MX2's proposed system can be found in Exhibit E to MX2's Form 1 application. The proposed rulebook for the proposed exchange can be found in Exhibit B to MX2's Form 1 application. A complete set of forms concerning membership and access can be found in Exhibit F to MX2's Form 1 application.

MX2's Form 1 application, including all of the Exhibits referenced above, is available online at *www.sec.gov/rules/other.shtml* as well as in the Commission's Public Reference Room. Interested persons are invited to submit written data, views, and arguments concerning MX2's Form 1, including whether the application is consistent with the Exchange 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 10–247 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 10–247. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to MX2's Form 1 filed with the Commission, and all written communications relating to the application 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 10–247 and should be submitted on or before January 31, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29630 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

[1] In Amendment No. 1, MX2 submitted updated portions of its Form 1 application, including Exhibits C (information regarding subsidiaries or affiliates), C–2 (Seventh Amended and Restated LLC Agreement of MEMX Holdings LLC), C–3 (Eighth Amended and Restated LLC Agreement of MEMX Holdings LLC), C–16 (Second Amended and Restated LLC Agreement of MEMX LLC), E (description of the proposed operation of the exchange) and J (list of officers, governors, members of all standing committees, or persons performing similar functions).

[2] 15 U.S.C. 78s(a).

[3] Form 1, Exhibit E at 6.

[4] 17 CFR 200.30–3(a)(71)(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101877; File No. SR–ISE–2024–56]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Approach to the Options Regulatory Fee (ORF) in 2025

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2024, Nasdaq ISE, LLC (''ISE'' or ''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 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 ISE's Pricing Schedule at Options 7, Section 9C regarding the Options Regulatory Fee.[3]

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to be operative on January 1, 2025.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On October 31, 2024, SR–ISE–2024–49 was filed to amend ORF. On November 27, 2024, SR–ISE–2024–49 was withdrawn and this rule change was filed. The current proposal amends the ORF Rate for Local Customer ''C'' Origin Code transactions executed on ISE, Local Firm ''F'' Origin Code transactions executed on ISE, and Away ORF Rate Firm ''F'' Origin Code multi-list transactions executed on non-ISE exchanges.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/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

ISE proposes to amend its current ORF in several respects. ISE proposes to amend its methodology of collection to: (1) specify that it is including options transactions in ISE proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as ''M'' at The Options Clearing Corporation (''OCC''). Additionally, ISE will assess a different rate for trades executed on ISE (''Local ORF Rate'') and trades executed on non-ISE exchanges (''Away ORF Rate'').

Background on Current ORF

Today, ISE assesses its ORF for each Customer[4] option transaction that is either: (1) executed by a Member[5] on ISE; or (2) cleared by an ISE Member at OCC in the Customer range,[6] even if the transaction was executed by a non-Member of ISE, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is an ISE Member, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA[8]); and (2) if the OCC clearing member is not an ISE Member, ORF is collected only on the cleared Customer contracts executed at ISE, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.[9] The current ISE ORF is $0.0013 per contract side.

Today, in the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. Today, in the case where a Member executes a transaction and a different Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. Today, in the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. Today, in the case where a Member executes a transaction on ISE and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on ISE and collected from the non-Member who cleared the transaction. Today, in the case where a Member executes a transaction at an away market and a non-Member ultimately clears the transaction, the ORF will not be assessed to the Member who executed the transaction or collected from the non-Member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

Today, the Exchange monitors the amount of revenue collected from the ORF (''ORF Regulatory Revenue'') to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.[10] In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the total Options Regulatory Costs. Thus, direct expenses would be 65% of total Options Regulatory Costs for 2024.[11]

The ORF is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of its Members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal for January 1, 2025

ISE has been reviewing it methodologies for the assessment and collection of ORF. As a result of this review, ISE proposes to revamp the current process of assessing and collecting ORF in various ways. Below ISE will explain the modelling it performed and the outcomes of the modelling which have led the Exchange to propose the below changes.

[4] Today, ORF is collected from Customers, Professionals and broker-dealers that are not affiliated with a clearing member that clear in the ''C'' range at OCC. *See supra* notes 13 and 14 for descriptions of Priority Customers and Professional Customers.

[5] The term ''Member'' means an organization that has been approved to exercise trading rights associated with Exchange Rights. *See* General 1, Section 1(a)(13).

[6] Market participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[7] The Exchange uses reports from OCC when assessing and collecting the ORF.

[8] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[9] By way of example, if Broker A, an ISE Member, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by ISE from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than ISE, it was cleared by an ISE Member in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between ISE and the transaction. If Broker A was not an ISE Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on ISE nor was it cleared by an ISE Member.

[10] The regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Members' options activity (''Options Regulatory Cost'').

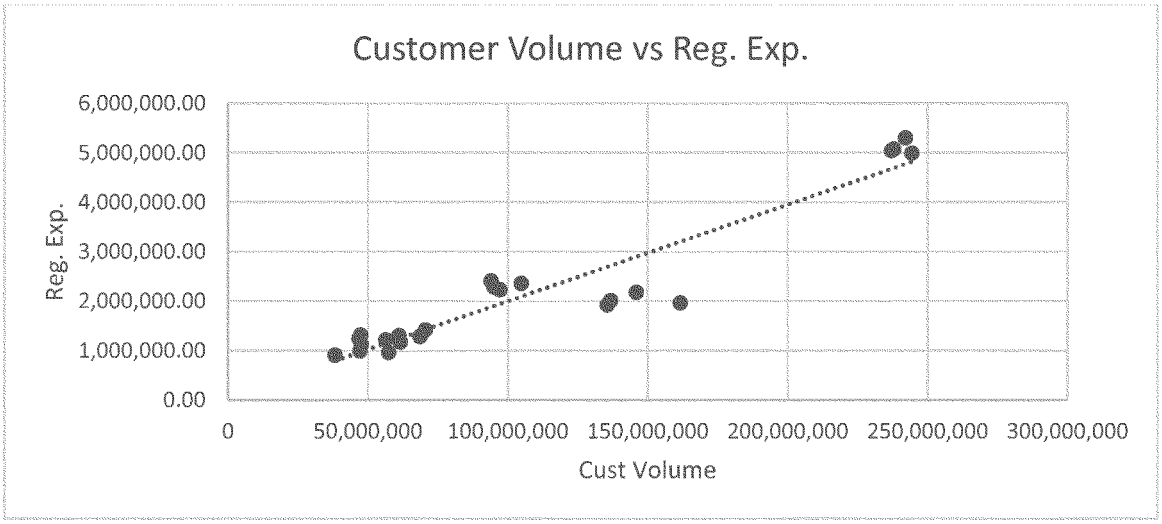
[11] Direct and indirect expenses are based on the Exchange's 2024 Regulatory Budget.

Effective January 1, 2025, ISE proposes to assess ORF to each ISE Member for multi-listed options transactions, including options transactions in ISE proprietary products,[12] cleared by OCC in all clearing ranges except market makers who clear as ''M'' at OCC (''Market Makers'') [13] where: (1) the execution occurs on ISE or (2) the execution occurs on another exchange and is cleared by an ISE Member. With this change, ISE proposes to amend its current ORF to assess ORF on Priority Customer,[14] Professional Customer,[15] and Firm Proprietary [16] and Broker-Dealer [17] transactions. All market participants, except Market Makers, would be subject to ORF.

The ORF would be collected by OCC on behalf of ISE from (1) ISE clearing members for all Priority Customer, Professional Customer, Firm Proprietary and Broker-Dealer transactions they clear or (2) non-members for all Priority Customer, Professional Customer, Firm Proprietary and Broker-Dealer transactions they clear that were executed on ISE. This model collects ORF where there is a nexus with ISE and does not collect ORF from a non-Member where the transaction takes place away from the Exchange.

Further, effective January 1, 2025, the Exchange proposes to establish a different ORF for trades executed on ISE (''Local ORF Rate'') and trades executed on non-ISE exchanges (''Away ORF Rate'') by market participants. For Priority Customer, Professional Customer, and broker-dealer (not affiliated with a clearing member) transactions that clear in the ''C'' range at OCC transactions (collectively ''Customers'') the Exchange proposes to assess a Local ORF Rate of $0.0116 per contract and an Away ORF Rate of $0.00 per contract. For Firm Proprietary and Broker-Dealer transactions that clear in the ''F'' range at OCC (collectively ''Firm Proprietary and Broker-Dealer Transactions'') the Exchange proposes to assess a Local ORF Rate of $0.00014 per contract and an Away ORF Rate of $0.00014 per contract. The combined amount of Local ORF and Away ORF collected may not exceed 88% of Options Regulatory Cost. ISE will ensure that ORF Regulatory Revenue does not exceed Options Regulatory Cost. As is the case today, the Exchange will notify Members via an Options Trader Alert of these changes at least 30 calendar days prior to January 1, 2025.

The Exchange utilized historical and current data from its affiliated options exchanges to create a new regression model that would tie expenses attributable to regulation to a respective source.[18] To that end, the Exchange plotted Customer volumes from each exchange [19] against Options Regulatory Cost from each exchange for the Time Period. Specifically, the Exchange utilized standard charting functionality to create a linear regression. The charting functionality yields a ''slope'' of the line, representing the marginal cost of regulation, as well as an ''intercept,'' representing the fixed cost of regulation.[20] The Exchange considered using non-linear models, but concluded that the best R^2 (''R-Squared'') [21] results came from a standard y = Mx + B format for regulatory expense. The R-Squared for the below charting method ranged from 85% to 95% historically. As noted, the plots below represent the Time Period. The X-axis reflects Customer volumes by exchange, by quarter and the Y-axis reflects regulatory expense by exchange.



[12] Proprietary products are products with intellectual property rights that are not multi-listed. ISE lists proprietary products.

[13] Capacity ''M'' covers Market Makers registered on ISE and market makers registered at non-ISE exchanges.

[14] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37). Unless otherwise noted, when used in this Pricing Schedule the term ''Priority Customer'' includes ''Retail''. *See* Options 7, Section 1(c).

[15] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* Options 7, Section 1(c). The ''C'' range at OCC includes both Priority Customer and Professional Customer transactions.

[16] A ''Firm Proprietary'' order is an order submitted by a Member for its own proprietary account. *See* Options 7, Section 1(c).

[17] A ''Broker-Dealer'' order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. *See* Options 7, Section 1(c). A Broker-Dealer clears in the ''F'' range at OCC.

[18] This new model seeks to provide a new approach to attributing Options Regulatory Cost to Options Regulatory Expense. In creating this model, the exchange did not rely on data from a single SRO as it had in the past.

[19] The Exchange utilized data from all Nasdaq affiliated options exchanges to create this model from 2023 Q3 through 2024 Q2 (''Time Period'').

[20] The Exchange utilized data from 2023 Q1 to 2024 Q3 to calculate the slope and intercept.

[21] R-Squared is a statistical measure that indicates how much of the variation of a dependent variable is explained by an independent variable in a regression model. The formula for calculating R-squared is: R2 = 1 − Unexplained Variation/Total Variation.

The results of this modelling indicated a high correlation and intercept for the baseline cost of regulating the options market as a whole. Specifically, the regression model indicated that (1) the marginal cost of regulation is easily measurable, and significantly attributable to Customer activity; and (2) the fixed cost of setting up a regulatory regime should arguably be dispersed across the industry so that all options exchanges have substantially similar revenue streams to satisfy the ''intercept'' element of cost. When seeking to offset the ''set-up'' cost of regulation, the Exchange attempted several levels of attribution. The most successful attribution was related to industry wide Firm Proprietary and Broker-Dealer Transaction volume. Of note, through analysis of the results of this regression model, there was no positive correlation that could be established between Customer away volume and regulatory expense. This led the Exchange to utilize a model with a two-factor regression on a quarterly basis for the last four quarters of volumes relative to the pool of expense data for the six Nasdaq affiliated options exchanges. Once again, standard spreadsheet functionality (including the Data Analysis Packet) was used to determine the mathematics for this model. The results of this two-factor model, which resulted in the attribution of Customer Local ORF and Firm Proprietary and Broker-Dealer Transaction Local and Away ORF, typically increased the R-Squared (goodness of fit) to >97% across multiple historical periods.[22]

Utilizing the new regression model, and assumptions in the proposal, the model demonstrates that Customer volumes are directly attributable to marginal cost, and also shows that Firm Proprietary and Broker-Dealer Transaction volumes industry-wide are a valid method (given the goodness of fit) to offset the fixed cost of regulation. Applying the regression coefficient values historically, the Exchange established a ''normalization'' by per options exchange. This ''normalization'' encompassed idiosyncratic exchange expense-volume relationships which served to tighten the attributions further while not deviating by more than 30% from the mean for any single options exchange in the model. The primary driver of this need for ''normalization'' are negotiated regulatory contracts that were negotiated at different points in time, yielding some differences in per contract regulatory costs by exchange. Normalization is therefore the average of a given exchange's historical (prior 4 quarters) ratio of regulatory expense to revenue when using the regressed values (for Customer Local ORF and Firm Proprietary and Broker-Dealer Transaction Local and Away ORF) that yields an effective rate by exchange. The ''normalization'' was then multiplied to a ''targeted collection rate'' of approximately 88% to arrive at ORF rates for Customer, Firm Proprietary and Broker-Dealer Transactions. Of note, when comparing the ORF rates generated from this method, historically, there appears to be a very tight relationship between the estimated modeled collection and actual expense and the regulatory expenses for that same period. In summary, the model does not appear to increase marginal returns.

One other important aspect of this modeling is the input of Options Regulatory Costs. The Exchange notes that in defining Options Regulatory Costs it accounts for the nexus between the expense and options regulation. By way of example, the Exchange excludes certain indirect expenses such as payroll expenses, accounts receivable, accounts payable, marketing, executive level expenses and corporate systems.

The Exchange would continue to monitor the amount of Options Regulatory Revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. In determining whether an expense is considered an Options Regulatory Cost, the Exchange would continue to review all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost. Members will continue to be provided with 30 calendar day notice of any change to ORF.

As is the case today, ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange for the supervision and regulation of Members' transactions, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. As discussed above, Options Regulatory Costs include direct regulatory expenses[23] and certain indirect expenses in support of the regulatory function.[24]

Finally, the Exchange notes that this proposal will sunset on July 1, 2025, at which point the Exchange would revert back to the ORF methodology and rate ($0.0013 per contract side) that was in effect prior to this rule change.[25]

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.[26] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[27], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Proposal for January 1, 2025

The Exchange believes the proposed ORF to be assessed on January 1, 2025, is reasonable, equitable and not unfairly discriminatory for various reasons. First, as of January 1, 2025, the Exchange would expand the collection of ORF to all clearing ranges, except Market Makers, provided the transaction was executed by an ISE Member or cleared by an ISE Member. With this amendment, ISE would begin to assess Firm Proprietary and Broker-Dealer Transactions an ORF, provided the transactions were executed by an ISE Member or cleared by an ISE Member, including options transactions in proprietary products. Second, as of January 1, 2025, the Exchange would assess different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firm Proprietary and Broker-Dealer

[22] The Exchange notes that various exchanges negotiate their respective contracts independently with FINRA creating some variability. Additionally, an exchange with a floor component would create some variability.

[23] The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations.

[24] The indirect expenses include support from such areas as Office of the General Counsel, technology, finance and internal audit.

[25] The Exchange proposes to reconsider the sunset date in 2025 and determine whether to proceed with the proposed ORF structure at that time.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

Transactions. Third, as of January 1, 2025, the combined amount of Local ORF and Away ORF collected would not exceed 88% of Options Regulatory Cost as all Members, except Market Makers, would be assessed ORF.

The Exchange believes that assessing all Members, except Market Makers, an ORF is reasonable, equitable and not unfairly discriminatory. While the Exchange acknowledges that there is a cost to regulate Market Makers, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.[29] Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.[30] Further, unlike other market participants, Primary Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[31] Also, Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Primary Market Makers and Competitive Market Makers pay Access Fees [32] in addition to other fees paid by other market participants. These liquidity providers are critical market participants in that they are the only market participants that are required to provide liquidity to ISE and are necessary for opening the market. Excluding Market Maker transactions from ORF allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on ISE in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders in addition to submitting quotes on the Exchange. This proposal would except orders submitted by Market Makers, in addition to quotes, for purposes of ORF. Market Makers utilize orders in their assigned options series to sweep the order book. The Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap [33] and therefore de minimis.

The Exchange believes including options transactions in ISE proprietary products is reasonable, equitable and not unfairly discriminatory because ISE lists various proprietary products for which the Exchange incurs Options Regulatory Costs. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF on their products. ISE notes that there are a small number of ISE proprietary products transacted as compared to multi-list options. Also, ISE would only collect an ORF for proprietary products transacted on its market. As such, the Exchange believes that only a Local ORF should be applied to an ISE proprietary product.

The Exchange believes that assessing different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firm Proprietary and Broker-Dealer Transactions and collecting no more than 88% of Options Regulatory Cost is reasonable, equitable and not unfairly discriminatory. Customer transactions account for a material portion of ISE's Options Regulatory Cost.[34] Customer transactions in combination with Firm Proprietary and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. Therefore, the Exchange believes that 88% of Options Regulatory Cost is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Cost borne by the Exchange. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm Proprietary and Broker-Dealer Transactions.[35] For these reasons, regulating Customer trading activity is ''much more labor-intensive'' and therefore, more costly. The Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to ISE.[36] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the

[29] *See* ISE Options 3, Section 8 and Options 2, Section 5.

[30] *Id.*

[31] *See* ISE Options 2, Section 4(b)(1) and (3).

[32] *See* ISE Options 7, Section 8A.

[33] *See* ISE Options 2, Section 6(b)(1) and (2). The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Options 2, Section 5(e)(1). The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Primary Market Maker Membership.

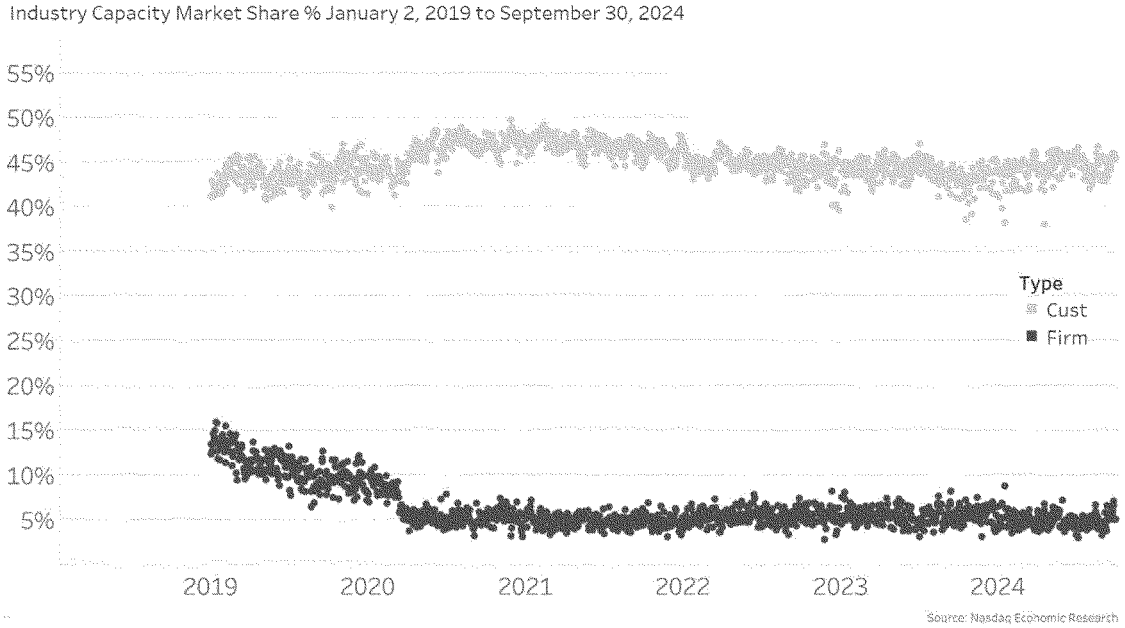
[34] The Exchange notes that the regulatory costs relating to monitoring Members with respect to Customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Member's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

[35] *See* ISE Options 10 Rules.

[36] The Know Your Customer or ''KYC'' provision is the obligation of the broker-dealer.

amount of volume attributed to such Customer transactions. Utilizing the new regression model, and assumptions in the proposal, it appears that ISE's Customer regulation occurs to a large extent on Exchange. Utilizing the new regression model, and assumptions in the proposal, the Exchange does not believe that significant Options Regulatory Costs should be attributed to Customers for activity that may occur across options markets. To that end, with this proposal, the Exchange would assess Customers a Local ORF, but not an Away ORF rate.

In contrast, the Options Regulatory Cost of regulating Firm Proprietary and Broker-Dealer Transactions is materially less than the Options Regulatory Costs of regulating Customer transactions, as explained above. The below chart derived from OCC data reflects the percentage of transactions by market participant.



With this model, the addition of Firm Proprietary and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. As these market participants are more sophisticated, the Exchange notes that there are not the same protections in place for Firm Proprietary and Broker-Dealer Transactions as compared to Customer transactions. Therefore, with the proposed model, the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. However, the Exchange notes that it appears from the new regression model and assumptions in the proposal, that unlike Customer transactions, the regulation of Firm Proprietary and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm Proprietary and Broker-Dealer Transactions both a Local ORF and an Away ORF in contrast to Customer transactions that would only be assessed a Local ORF. The Exchange believes that not assessing Market Maker transactions an ORF permits these market participants to utilize their resources to quote tighter in the market. Tighter quotes benefits Customers as well as other market participants who interact with that liquidity.

The Exchange's proposal to establish both a Local ORF Rate and an Away ORF Rate and allocate the portion of Options Regulatory Cost differently between the two separate rates, by market participant, ensures that the Local ORF Rate and Away ORF Rate reflect the amount of Options Regulatory Costs associated with different types of surveillances and are reasonable, equitable and not unfairly discriminatory. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess only Firm Proprietary and Broker-Dealer Transactions an Away ORF. With this model, while the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, it occurs both on the Exchange and across options markets.[37] The Exchange believes that assessing the Firm Proprietary and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Members combined with the activity that is required to be regulated both on the Exchange and across options markets. The Exchange notes that there are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm Proprietary and Broker-Dealer Members.[38] While not large in number, when compared to the overall number of Exchange rules that are surveilled by ISE for on-Exchange activity, the Away ORF that would be assessed to Firm Proprietary and Broker-Dealer regulation would account for those costs. Additionally, the Exchange believes that limiting the amount of

[37] ISE pays the Financial Industry Regulatory Authority (''FINRA'') to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail (''CAT'') data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

[38] ISE conducts surveillances and enforces ISE Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some ISE trading rules are automatically enforced by ISE's System.

ORF assessed for activity that occurs on non-ISE exchanges avoids overlapping ORFs that would otherwise be assessed by ISE and other options exchanges that also assess an ORF. Also, the Exchange's proposal continues to ensure that Options Regulatory Revenue, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. Fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

Capping the combined amount of Local ORF and Away ORF collected at 88% of Options Regulatory Cost commencing January 1, 2025, is reasonable, equitable and not unfairly discriminatory as given these factors. The Exchange will review the ORF Regulatory Revenue at the end of January 2025 and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds its projections.[39]

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 intra-market competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to ORF do not impose an undue burden on inter-market competition because ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange notes, however, the proposed change is not designed to address any competitive issues. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Cost.

Proposal for January 1, 2025

Excluding Market Makers does not impose an undue burden on intra-market competition because, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.[40] Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.[41] Further, unlike other market participants, Primary Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[42] Also, Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Primary Market Makers and Competitive Market Makers pay Access Fees[43] in addition to other fees paid by other market participants. These liquidity providers are critical market participants in that they are the only market participants that are required to provide liquidity to ISE and are necessary for opening the market. Excluding Market Maker transactions from ORF does not impose an intra-market burden on competition, rather it allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on ISE in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders on the Exchange, in addition to submitting quotes. The Exchange's proposal to except orders submitted by Market Makers, in addition to quotes, for purposes of ORF does not impose an undue burden on intra-market competition because Market Makers utilize orders in their assigned options series to sweep the order book. Further, the Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap[44] and therefore de minimis.

Uniformly including options transactions in ISE proprietary products in ORF for all ISE Members does not impose an undue burden on intra-market competition. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF on their products. ISE notes that there are a small number of ISE proprietary products transacted as compared to multi-list options. Also, ISE would only collect an ORF for proprietary products transacted on its market.

The Exchange's proposal to expand the clearing ranges to specifically include Firm Proprietary and Broker-Dealer Transactions, in addition to Priority Customer and Professional Customer transactions, as of January 1, 2025, does not impose an undue burden on intra-market competition as Customer transactions account for a material portion of ISE's Options Regulatory Cost.[45] Customer transactions in combination with Firm Proprietary and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm Proprietary and Broker-Dealer Transactions.[46] For these reasons, regulating Customer trading activity is ''much more labor-intensive'' and therefore, more costly. Further, the Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining

[39] ISE would submit a rule change to the Commission to amend ORF rates.

[40] *See* ISE Options 3, Section 8 and Options 2, Section 5.

[41] *Id.*

[42] *See* ISE Options 2, Section 4(b)(1) and (3).

[43] *See* ISE Options 7, Section 8A.

[44] *See* ISE Options 2, Section 6(b)(1) and (2). The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Options 2, Section 5(e)(1). The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Primary Market Maker Membership.

[45] The Exchange notes that the regulatory costs relating to monitoring Members with respect to customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of customers, but also the Member's relationship with its customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component of the regulatory program.

[46] *See* ISE Options 10 Rules.

Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to ISE.[47] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Not attributing significant Options Regulatory Costs to Customers for activity that may occur across options markets does not impose an undue burden on intra-market competition because the data in the regression model demonstrates that ISE's Customer regulation occurs to a large extent on Exchange.

The Exchange believes that assessing Firm Proprietary and Broker-Dealer Transactions a different ORF and assessing both a Local ORF and an Away ORF to these transactions does not impose an undue burden on intra-market competition because the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. With this model, the addition of Firm Proprietary and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. Unlike Customer transactions, the regulation of Firm Proprietary and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm Proprietary and Broker-Dealer Transactions both a Local ORF and an Away ORF.

The Exchange's proposal to allocate the portion of costs differently between the Local ORF and Away ORF does not create an undue burden on intra-market competition. The Exchange believes that each rate reflects the amount of Options Regulatory Costs associated with different types of surveillances and does not create an undue burden on competition as ISE Members, excluding except Market Makers, would be uniformly assessed either a Local ORF Rate or an Away ORF Rate depending on where the transaction occurred and whether the transaction was executed or cleared by an ISE Member. Also, the Exchange would uniformly assess the Local ORF Rate and an Away ORF Rate by market participant. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets.

The Exchange believes that assessing only Firm Proprietary and Broker-Dealer Transactions an Away ORF does not create an undue burden on intra-market competition because while the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, the regulation of Firm Proprietary and Broker-Dealer Transactions occurs both on the Exchange and across options markets.[48] The Exchange believes that assessing Firm Proprietary and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Members combined with the activity that is required to be regulated both on the Exchange and across options markets. There are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm Proprietary and Broker-Dealer Members.[49] While not large in number, when compared to the overall number of Exchange rules that are surveilled by ISE for on-Exchange activity, the Away ORF that would be assessed to Firm Proprietary and Broker-Dealer Transactions would account for those Options Regulatory Costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-ISE exchanges does not impose a burden on intra-market competition, rather it avoids overlapping ORFs that would otherwise be assessed by ISE and other options exchanges that also assess an ORF. With this model, Customer transactions would be assessed a higher Local ORF, while not being assessed an Away ORF as compared to Firm Proprietary and Broker-Dealer Transactions. The Exchange believes that this difference in allocation is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Costs borne by different Members of the Exchange in light of the volume different Members transact on the Exchange.

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[50] and Rule 19b–4(f)(2)[51] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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–ISE–2024–56 on the subject line.

[47] The Know Your Customer or ''KYC'' provision is the obligation of the broker-dealer.

[48] ISE pays the Financial Industry Regulatory Authority (''FINRA'') to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail (''CAT'') data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

[49] ISE conducts surveillances and enforces ISE Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some ISE trading rules are automatically enforced by ISE's System.

[50] 15 U.S.C. 78s(b)(3)(A)(ii).

[51] 17 CFR 240.19b–4(f)(2).

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–ISE–2024–56. 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–ISE–2024–56 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29624 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101875; File No. SR–GEMX–2024–42]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Approach to the Options Regulatory Fee (ORF) in 2025

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2024, Nasdaq GEMX, LLC (''GEMX'' or ''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 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 GEMX's Pricing Schedule at Options 7, Section 5 regarding the Options Regulatory Fee.[3]

While the changes proposed herein are effective upon filing, the Exchange has designated the 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/gemx/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

GEMX proposes to amend its current ORF in several respects. GEMX proposes to amend its methodology of collection to: (1) specify that it is including options transactions in GEMX proprietary products; and (2) assess ORF in all clearing ranges except market makers who clear as ''M'' at The Options Clearing Corporation (''OCC''). Additionally, GEMX will assess a different rate for trades executed on GEMX (''Local ORF Rate'') and trades executed on non-GEMX exchanges (''Away ORF Rate'').

Background on Current ORF

Today, GEMX assesses its ORF for each Customer[4] option transaction that is either: (1) executed by a Member[5] on GEMX; or (2) cleared by an GEMX Member at OCC in the Customer range,[6] even if the transaction was executed by a non-Member of GEMX, regardless of the exchange on which the transaction occurs.[7] If the OCC clearing member is an GEMX Member, ORF is assessed and collected on all ultimately cleared Customer contracts (after adjustment for CMTA[8]); and (2) if the OCC clearing member is not an GEMX Member, ORF is collected only on the cleared Customer contracts executed at GEMX, taking into account any CMTA instructions which may result in collecting the ORF from a non-Member.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On October 31, 2024, SR–GEMX–2024–37 was filed to amend ORF. On November 27, 2024, SR–GEMX–2024–37 was withdrawn and this rule change was filed. The current proposal amends the ORF Rate for Local Customer ''C'' Origin Code transactions executed on GEMX, Local Firm ''F'' Origin Code transactions executed on GEMX, and Away ORF Rate Firm ''F'' Origin Code multi-list transactions executed on non-GEMX exchanges.

[4] Today, ORF is collected from Customers, Professionals and broker-dealers that are not affiliated with a clearing member that clear in the ''C'' range at OCC. *See supra* notes 13 and 14 for descriptions of Priority Customers and Professional Customers.

[5] The term ''Member'' means an organization that has been approved to exercise trading rights associated with Exchange Rights. *See* General 1, Section 1(a)(14).

[6] Market participants must record the appropriate account origin code on all orders at the time of entry of the order. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[7] The Exchange uses reports from OCC when assessing and collecting the ORF.

[8] CMTA or Clearing Member Trade Assignment is a form of ''give-up'' whereby the position will be assigned to a specific clearing firm at OCC.

[9] By way of example, if Broker A, an GEMX Member, routes a Customer order to CBOE and the transaction executes on CBOE and clears in Broker A's OCC Clearing account, ORF will be collected by GEMX from Broker A's clearing account at OCC via direct debit. While this transaction was executed on a market other than GEMX, it was cleared by an

Continued

The current GEMX ORF is $0.0012 per contract side.

Today, in the case where a Member both executes a transaction and clears the transaction, the ORF will be assessed to and collected from that Member. Today, in the case where a Member executes a transaction and a different Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction and not the Member who executes the transaction. Today, in the case where a non-Member executes a transaction at an away market and a Member clears the transaction, the ORF will be assessed to and collected from the Member who clears the transaction. Today, in the case where a Member executes a transaction on GEMX and a non-Member clears the transaction, the ORF will be assessed to the Member that executed the transaction on GEMX and collected from the non-Member who cleared the transaction. Today, in the case where a Member executes a transaction at an away market and a non-Member ultimately clears the transaction, the ORF will not be assessed to the Member who executed the transaction or collected from the non-Member who cleared the transaction because the Exchange does not have access to the data to make absolutely certain that ORF should apply. Further, the data does not allow the Exchange to identify the Member executing the trade at an away market.

ORF Revenue and Monitoring of ORF

Today, the Exchange monitors the amount of revenue collected from the ORF (''ORF Regulatory Revenue'') to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs.[10] In determining whether an expense is considered an Options Regulatory Cost, the Exchange reviews all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter offset Options Regulatory Cost.

ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of member Customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Options Regulatory Costs include direct regulatory expenses and certain indirect expenses in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations. The indirect expenses are only those expenses that are in support of the regulatory functions, such areas include Office of the General Counsel, technology, finance, and internal audit. Indirect expenses will not exceed 35% of the total Options Regulatory Costs. Thus, direct expenses would be 65% of total Options Regulatory Costs for 2024.[11]

The ORF is designed to recover a material portion of the Options Regulatory Costs to the Exchange of the supervision and regulation of its Members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

Proposal for January 1, 2025

GEMX has been reviewing it methodologies for the assessment and collection of ORF. As a result of this review, GEMX proposes to revamp the current process of assessing and collecting ORF in various ways. Below GEMX will explain the modelling it performed and the outcomes of the modelling which have led the Exchange to propose the below changes.

Effective January 1, 2025, GEMX proposes to assess ORF to each GEMX Member for multi-listed options transactions, including options transactions in GEMX proprietary products,[12] cleared by OCC in all clearing ranges except market makers who clear as ''M'' at OCC (''Market Makers'') [13] where: (1) the execution occurs on GEMX or (2) the execution occurs on another exchange and is cleared by an GEMX Member. With this change, GEMX proposes to amend its current ORF to assess ORF on Priority Customer,[14] Professional Customer,[15] and Firm Proprietary [16] and Broker-Dealer [17] transactions. All market participants, except Market Makers, would be subject to ORF.

The ORF would be collected by OCC on behalf of GEMX from (1) GEMX clearing members for all Priority Customer, Professional Customer, Firm Proprietary and Broker-Dealer transactions they clear or (2) non-members for all Priority Customer, Professional Customer, Firm Proprietary and Broker-Dealer transactions they clear that were executed on GEMX. This model collects ORF where there is a nexus with GEMX and does not collect ORF from a non-Member where the transaction takes place away from the Exchange.

Further, effective January 1, 2025, the Exchange proposes to establish a different ORF for trades executed on GEMX (''Local ORF Rate'') and trades executed on non-GEMX exchanges (''Away ORF Rate'') by market participants. For Priority Customer, Professional Customer, and broker-dealer (not affiliated with a clearing member) transactions that clear in the ''C'' range at OCC transactions (collectively ''Customers'') the Exchange proposes to assess a Local ORF Rate of $0.0170 per contract and an Away ORF Rate of $0.00 per contract. For Firm Proprietary and Broker-Dealer transactions that clear in the ''F'' range at OCC (collectively ''Firm Proprietary and Broker-Dealer Transactions'') the Exchange proposes to assess a Local ORF Rate of $0.00020 per contract and an Away ORF Rate of $0.00020 per contract. The combined amount of Local ORF and Away ORF collected may not exceed 88% of Options Regulatory Cost. GEMX will ensure that ORF Regulatory Revenue does not exceed Options Regulatory Cost. As is the case today,

GEMX Member in the member's OCC clearing account in the Customer range, therefore there is a regulatory nexus between GEMX and the transaction. If Broker A was not an GEMX Member, then no ORF should be assessed and collected because there is no nexus; the transaction did not execute on GEMX nor was it cleared by an GEMX Member.

[10] The regulatory costs for options comprise a subset of the Exchange's regulatory budget that is specifically related to options regulatory expenses and encompasses the cost to regulate all Members' options activity (''Options Regulatory Cost'').

[11] Direct and indirect expenses are based on the Exchange's 2024 Regulatory Budget.

[12] Proprietary products are products with intellectual property rights that are not multi-listed. GEMX lists proprietary products.

[13] Capacity ''M'' covers Market Makers registered on GEMX and market makers registered at non-GEMX exchanges.

[14] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term ''Priority Customer'' includes ''Retail''. *See* Options 7, Section 1(c).

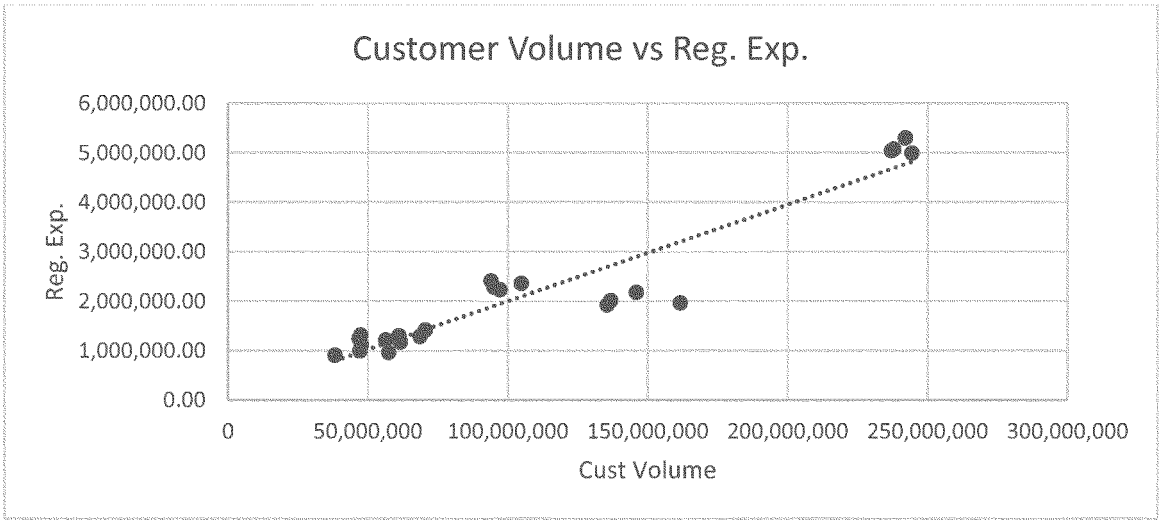
[15] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* Options 7, Section 1(c). The ''C'' range at OCC includes both Priority Customer and Professional Customer transactions.

[16] A ''Firm Proprietary'' order is an order submitted by a Member for its own proprietary account. *See* Options 7, Section 1(c).

[17] A ''Broker-Dealer'' order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. *See* Options 7, Section 1(c). A Broker-Dealer clears in the ''F'' range at OCC.

the Exchange will notify Members via an Options Trader Alert of these changes at least 30 calendar days prior to January 1, 2025.

The Exchange utilized historical and current data from its affiliated options exchanges to create a new regression model that would tie expenses attributable to regulation to a respective source.[18] To that end, the Exchange plotted Customer volumes from each exchange [19] against Options Regulatory Cost from each exchange for the Time Period. Specifically, the Exchange utilized standard charting functionality to create a linear regression. The charting functionality yields a ''slope'' of the line, representing the marginal cost of regulation, as well as an ''intercept,'' representing the fixed cost of regulation.[20] The Exchange considered using non-linear models, but concluded that the best R^2 (''R-Squared'') [21] results came from a standard y = Mx +B format for regulatory expense. The R-Squared for the below charting method ranged from 85% to 95% historically. As noted, the plots below represent the Time Period. The X-axis reflects Customer volumes by exchange, by quarter and the Y-axis reflects regulatory expense by exchange.



The results of this modelling indicated a high correlation and intercept for the baseline cost of regulating the options market as a whole. Specifically, the regression model indicated that (1) the marginal cost of regulation is easily measurable, and significantly attributable to Customer activity; and (2) the fixed cost of setting up a regulatory regime should arguably be dispersed across the industry so that all options exchanges have substantially similar revenue streams to satisfy the ''intercept'' element of cost. When seeking to offset the ''set-up'' cost of regulation, the Exchange attempted several levels of attribution. The most successful attribution was related to industry wide Firm Proprietary and Broker-Dealer Transaction volume. Of note, through analysis of the results of this regression model, there was no positive correlation that could be established between Customer away volume and regulatory expense. This led the Exchange to utilize a model with a two-factor regression on a quarterly basis for the last four quarters of volumes relative to the pool of expense data for the six Nasdaq affiliated options exchanges. Once again, standard spreadsheet functionality (including the Data Analysis Packet) was used to determine the mathematics for this model. The results of this two-factor model, which resulted in the attribution of Customer Local ORF and Firm Proprietary and Broker-Dealer Transaction Local and Away ORF, typically increased the R-Squared (goodness of fit) to >97% across multiple historical periods.[22]

Utilizing the new regression model, and assumptions in the proposal, the model demonstrates that Customer volumes are directly attributable to marginal cost, and also shows that Firm Proprietary and Broker-Dealer Transaction volumes industry-wide are a valid method (given the goodness of fit) to offset the fixed cost of regulation. Applying the regression coefficient values historically, the Exchange established a ''normalization'' by per options exchange. This ''normalization'' encompassed idiosyncratic exchange expense-volume relationships which served to tighten the attributions further while not deviating by more than 30% from the mean for any single options exchange in the model. The primary driver of this need for ''normalization'' are negotiated regulatory contracts that were negotiated at different points in time, yielding some differences in per contract regulatory costs by exchange. Normalization is therefore the average of a given exchange's historical (prior 4 quarters) ratio of regulatory expense to revenue when using the regressed values (for Customer Local ORF and Firm Proprietary and Broker-Dealer Transaction Local and Away ORF) that yields an effective rate by exchange. The ''normalization'' was then multiplied to a ''targeted collection rate'' of approximately 88% to arrive at ORF rates for Customer, Firm Proprietary and Broker-Dealer Transactions. Of note, when comparing the ORF rates generated from this method,

[18] This new model seeks to provide a new approach to attributing Options Regulatory Cost to Options Regulatory Expense. In creating this model, the exchange did not rely on data from a single SRO as it had in the past.

[19] The Exchange utilized data from all Nasdaq affiliated options exchanges to create this model from 2023 Q3 through 2024 Q2 (''Time Period'').

[20] The Exchange utilized data from 2023 Q1 to 2024 Q3 to calculate the slope and intercept.

[21] R-Squared is a statistical measure that indicates how much of the variation of a dependent variable is explained by an independent variable in a regression model. The formula for calculating R-squared is: R2 = 1 − Unexplained Variation/Total Variation.

[22] The Exchange notes that various exchanges negotiate their respective contracts independently with FINRA creating some variability. Additionally, an exchange with a floor component would create some variability.

historically, there appears to be a very tight relationship between the estimated modeled collection and actual expense and the regulatory expenses for that same period. In summary, the model does not appear to increase marginal returns.

One other important aspect of this modeling is the input of Options Regulatory Costs. The Exchange notes that in defining Options Regulatory Costs it accounts for the nexus between the expense and options regulation. By way of example, the Exchange excludes certain indirect expenses such as payroll expenses, accounts receivable, accounts payable, marketing, executive level expenses and corporate systems.

The Exchange would continue to monitor the amount of Options Regulatory Revenue collected from the ORF to ensure that it, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. In determining whether an expense is considered an Options Regulatory Cost, the Exchange would continue to review all costs and makes determinations if there is a nexus between the expense and a regulatory function. The Exchange notes that fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost. Members will continue to be provided with 30 calendar day notice of any change to ORF.

As is the case today, ORF Regulatory Revenue, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the Options Regulatory Costs to the Exchange for the supervision and regulation of Members' transactions, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. As discussed above, Options Regulatory Costs include direct regulatory expenses [23] and certain indirect expenses in support of the regulatory function.[24]

Finally, the Exchange notes that this proposal will sunset on July 1, 2025, at which point the Exchange would revert back to the ORF methodology and rate ($0.0012 per contract side) that was in effect prior to this rule change.[25]

[23] The direct expenses include in-house and third-party service provider costs to support the day-to-day regulatory work such as surveillances, investigations and examinations.

[24] The indirect expenses include support from such areas as Office of the General Counsel, technology, finance and internal audit.

[25] The Exchange proposes to reconsider the sunset date in 2025 and determine whether to proceed with the proposed ORF structure at that time.

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.[26] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[27] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Proposal for January 1, 2025

The Exchange believes the proposed ORF to be assessed on January 1, 2025, is reasonable, equitable and not unfairly discriminatory for various reasons. First, as of January 1, 2025, the Exchange would expand the collection of ORF to all clearing ranges, except Market Makers, provided the transaction was executed by an GEMX Member or cleared by an GEMX Member. With this amendment, GEMX would begin to assess Firm Proprietary and Broker-Dealer Transactions an ORF, provided the transactions were executed by an GEMX Member or cleared by an GEMX Member, including options transactions in proprietary products. Second, as of January 1, 2025, the Exchange would assess different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firm Proprietary and Broker-Dealer Transactions. Third, as of January 1, 2025, the combined amount of Local ORF and Away ORF collected would not exceed 88% of Options Regulatory Cost as all Members, except Market Makers, would be assessed ORF.

The Exchange believes that assessing all Members, except Market Makers, an ORF is reasonable, equitable and not unfairly discriminatory. While the Exchange acknowledges that there is a cost to regulate Market Makers, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.[29] Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.[30] Further, unlike other market participants, Primary Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[31] Also, Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay CMM Trading Right Fees [32] in addition to other fees paid by other market participants. These liquidity providers are critical market participants in that they are the only market participants that are required to provide liquidity to GEMX and are necessary for opening the market. Excluding Market Maker transactions from ORF allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on GEMX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders in addition to submitting quotes on the Exchange. This proposal would except orders submitted by Market Makers, in addition to quotes, for purposes of ORF. Market Makers utilize orders in their assigned options series to sweep the order book. The Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* GEMX Options 3, Section 8 and Options 2, Section 5.

[30] *Id.*

[31] *See* GEMX Options 2, Section 4(b)(1) and (3).

[32] *See* GEMX Options 7, Section 6B.

unassigned options series are far below the cap [33] and therefore de minimis.

The Exchange believes including options transactions in GEMX proprietary products is reasonable, equitable and not unfairly discriminatory because GEMX lists various proprietary products for which the Exchange incurs Options Regulatory Costs. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF on their products. GEMX notes that there are a small number of GEMX proprietary products transacted as compared to multi-list options. Also, GEMX would only collect an ORF for proprietary products transacted on its market. As such, the Exchange believes that only a Local ORF should be applied to a GEMX proprietary product.

The Exchange believes that assessing different rates to Customer transactions for the Local ORF Rate and Away ORF Rate as compared to Firm Proprietary and Broker-Dealer Transactions and collecting no more than 88% of Options Regulatory Cost is reasonable, equitable and not unfairly discriminatory. Customer transactions account for a material portion of GEMX's Options Regulatory Cost.[34] Customer transactions in combination with Firm Proprietary and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. Therefore, the Exchange believes that 88% of Options Regulatory Cost is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Cost borne by the Exchange. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm Proprietary and Broker-Dealer Transactions.[35] For these reasons, regulating Customer trading activity is ''much more labor-intensive'' and therefore, more costly. The Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to GEMX.[36] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Utilizing the new regression model, and assumptions in the proposal, it appears that GEMX's Customer regulation occurs to a large extent on Exchange. Utilizing the new regression model, and assumptions in the proposal, the Exchange does not believe that significant Options Regulatory Costs should be attributed to Customers for activity that may occur across options markets. To that end, with this proposal, the Exchange would assess Customers a Local ORF, but not an Away ORF rate.

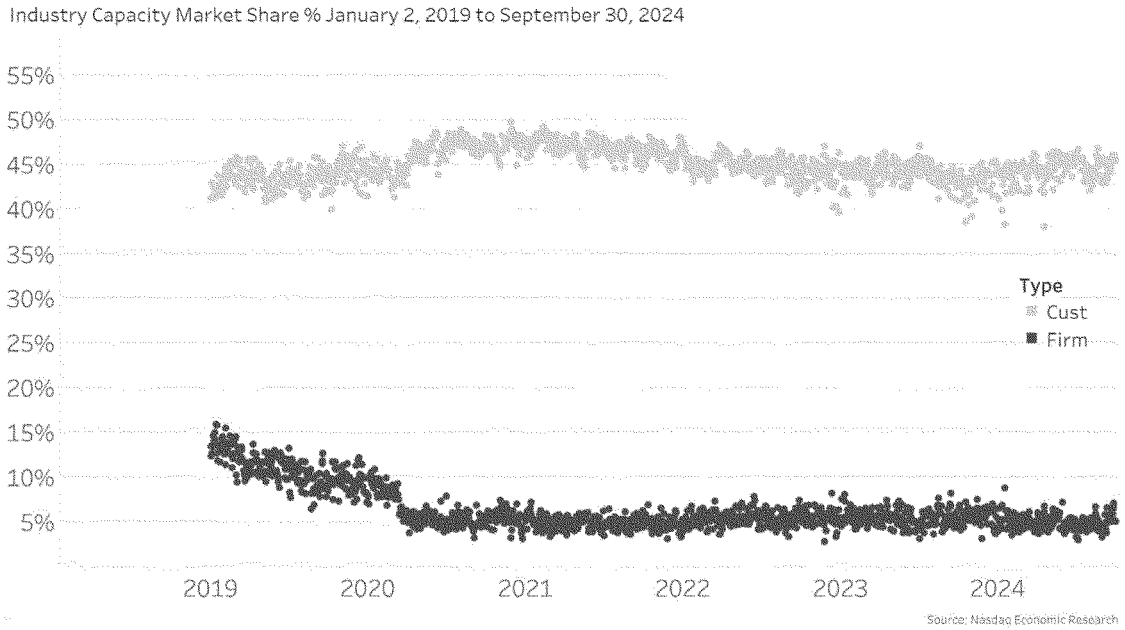
In contrast, the Options Regulatory Cost of regulating Firm Proprietary and Broker-Dealer Transactions is materially less than the Options Regulatory Costs of regulating Customer transactions, as explained above. The below chart derived from OCC data reflects the percentage of transactions by market participant.

[33] *See* GEMX Options 2, Section 6(b)(1) and (2). The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Options 2, Section 5(e)(1). The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Primary Market Maker Membership.

[34] The Exchange notes that the regulatory costs relating to monitoring Members with respect to Customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resoures as the Exchange needs to review not only the trading activity on behalf of Customers, but also the Member's relationshi with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the Customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-Customer component of the regulatory program.

[35] *See* GEMX Options 10 Rules. GEMX Options 10 Rules are incorporated by reference to ISE Options 10 Rules.

[36] The Know Your Customer or ''KYC'' provision is the obligation of the broker-dealer.



With this model, the addition of Firm Proprietary and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. As these market participants are more sophisticated, the Exchange notes that there are not the same protections in place for Firm Proprietary and Broker-Dealer Transactions as compared to Customer transactions. Therefore, with the proposed model, the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. However, the Exchange notes that it appears from the new regression model and assumptions in the proposal, that unlike Customer transactions, the regulation of Firm Proprietary and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm Proprietary and Broker-Dealer Transactions both a Local ORF and an Away ORF in contrast to Customer transactions that would only be assessed a Local ORF. The Exchange believes that not assessing Market Maker transactions an ORF permits these market participants to utilize their resources to quote tighter in the market. Tighter quotes benefits Customers as well as other market participants who interact with that liquidity.

The Exchange's proposal to establish both a Local ORF Rate and an Away ORF Rate and allocate the portion of Options Regulatory Cost differently between the two separate rates, by market participant, ensures that the Local ORF Rate and Away ORF Rate reflect the amount of Options Regulatory Costs associated with different types of surveillances and are reasonable, equitable and not unfairly discriminatory. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess only Firm Proprietary and Broker-Dealer Transactions an Away ORF. With this model, while the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, it occurs both on the Exchange and across options markets.[37] The Exchange believes that assessing the Firm Proprietary and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Members combined with the activity that is required to be regulated both on the Exchange and across options markets. The Exchange notes that there are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm Proprietary and Broker-Dealer Members.[38] While not large in number, when compared to the overall number of Exchange rules that are surveilled by GEMX for on-Exchange activity, the Away ORF that would be assessed to Firm Proprietary and Broker-Dealer regulation would account for those costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-GEMX exchanges avoids overlapping ORFs that would otherwise be assessed by GEMX and other options exchanges that also assess an ORF. Also, the Exchange's proposal continues to ensure that Options Regulatory Revenue, in combination with other regulatory fees and fines, does not exceed Options Regulatory Costs. Fines collected by the Exchange in connection with a disciplinary matter will continue to offset Options Regulatory Cost.

Capping the combined amount of Local ORF and Away ORF collected at 88% of Options Regulatory Cost commencing January 1, 2025, is reasonable, equitable and not unfairly discriminatory as given these factors. The Exchange will review the ORF Regulatory Revenue at the end of January 2025 and would amend the ORF if it finds that its ORF Regulatory Revenue exceeds its projections.[39]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[37] GEMX pays Financial Industry Regulatory Authority (''FINRA'') to perform certain cross-market surveillances on its behalf. In order to peform cross-market surveillance, Consolidated Audit Trail (''CAT'') data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

[38] GEMX conducts surveillances and enforces GEMX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some GEMX trading rules are automatically enforced by GEMX's System.

[39] GEMX would submit a rule change to the Commission to amend ORF rates.

any burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to ORF do not impose an undue burden on inter-market competition because ORF is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange notes, however, the proposed change is not designed to address any competitive issues. The Exchange is obligated to ensure that the amount of ORF Regulatory Revenue, in combination with its other regulatory fees and fines, does not exceed ORF Regulatory Cost.

Proposal for January 1, 2025

Excluding Market Makers does not impose an undue burden intra-market competition because, unlike other market participants, Market Makers have various regulatory requirements with respect to quoting as provided for in Options 2, Section 4. Specifically, Market Makers have certain quoting requirements with respect to their assigned options series as provided in Options 2, Section 5. Primary Market Makers are obligated to quote in the Opening Process and intra-day.[40] Additionally, Market Makers may enter quotes in the Opening Process to open an option series and they are required to quote intra-day.[41] Further, unlike other market participants, Primary Market Makers and Market Makers have obligations to compete with other Market Makers to improve the market in all series of options classes to which the Market Maker is appointed and to update market quotations in response to changed market conditions in all series of options classes to which the Market Maker is appointed.[42] Also, Primary Market Makers and Market Makers incur other costs imposed by the Exchange related to their quoting obligations in addition to other fees paid by other market participants. Market Makers are subject to a number of fees, unlike other market participants. Market Makers pay CMM Trading Right Fees[43] in addition to other fees paid by other market participants. These liquidity providers are critical market participants in that they are the only market participants that are required to provide liquidity to GEMX and are necessary for opening the market. Excluding Market Maker transactions from ORF does not impose an intra-market burden on competition, rather it allows these market participants to manage their costs and consequently their business model more effectively thus enabling them to better allocate resources to other technologies that are necessary to manage risk and capacity to ensure that these market participants continue to compete effectively on GEMX in providing tight displayed quotes which in turn benefits markets generally and market participants specifically. Finally, the Exchange notes that Market Makers may transact orders on the Exchange, in addition to submitting quotes. The Exchange's proposal to except orders submitted by Market Makers, in addition to quotes, for purposes of ORF does not impose an undue burden on intra-market competition because Market Makers utilize orders in their assigned options series to sweep the order book. Further, the Exchange believes the quantity of orders utilized by Market Makers in their assigned series is de minimis. In their unassigned options series, Market Makers utilize orders to hedge their risk or respond to auction. The Exchange notes that the number of orders submitted by Market Makers in their unassigned options series are far below the cap[44] and therefore de minimis.

Uniformly including options transactions in GEMX proprietary products in ORF for all GEMX Members does not impose an undue burden on intra-market competition. The Exchange believes that only exchanges that list proprietary products should be able to collect a Local ORF on their products. GEMX notes that there are a small number of GEMX proprietary products transacted as compared to multi-list options. Also, GEMX would only collect an ORF for proprietary products transacted on its market.

The Exchange's proposal to expand the clearing ranges to specifically include Firm Proprietary and Broker-Dealer Transactions, in addition to Priority Customer and Professional Customer transactions, as of January 1, 2025, does not impose an undue burden on intra-market competition as Customer transactions account for a material portion of GEMX's Options Regulatory Cost.[45] Customer transactions in combination with Firm Proprietary and Broker-Dealer Transactions account for a large portion of the Exchange's surveillance expense. With respect to Customer transactions, options volume continues to surpass volume from other options participants. Additionally, there are rules in the Exchange's Rulebook that deal exclusively with Customer transactions, such as rules involving doing business with a Customer, which would not apply to Firm Proprietary and Broker-Dealer Transactions.[46] For these reasons, regulating Customer trading activity is ''much more labor-intensive'' and therefore, more costly. Further, the Exchange believes that a large portion of the Options Regulatory Cost relates to Customer allocation because obtaining Customer information may be more time intensive. For example, non-Customer market participants are subject to various regulatory and reporting requirements which provides the Exchange certain data with respect to these market participants. In contrast, Customer information is known by Members of the Exchange and is not readily available to GEMX.[47] The Exchange may have to take additional steps to understand the facts surrounding particular trades involving a Customer which may require requesting such information from a broker-dealer. Further, Customers require more Exchange regulatory services based on the amount of options business they conduct. For example, there are Options Regulatory Costs associated with main office and branch office examinations (*e.g.,* staff expenses), as well as investigations into Customer complaints and the terminations of registered persons. As a result, the Options Regulatory Costs associated with administering the

[40] *See* GEMX Options 3, Section 8 and Options 2, Section 5.

[41] *Id.*

[42] *See* GEMX Options 2, Section 4(b)(1) and (3).

[43] *See* GEMX Options 7, Section 6B.

[44] *See* GEMX Options 2, Section 6(b)(1) and (2). The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to Options 2, Section 5(e)(1). The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Primary Market Maker Membership.

[45] The Exchange notes that the regulatory costs relating to monitoring Members with respect to customer trading activity are generally higher than the regulatory costs associated with Members that do not engage in customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating Members that engage in customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of customers, but also the Member's relationship with its customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component of the regulatory program.

[46] *See* GEMX Options 10 Rules. GEMX Options 10 Rules are incorporated by reference to ISE Options 10 Rules.

[47] The Know Your Customer or ''KYC'' provision is the obligation of the broker-dealer.

Customer component of the Exchange's overall regulatory program are materially higher than the Options Regulatory Costs associated with administering the non-Customer component when coupled with the amount of volume attributed to such Customer transactions. Not attributing significant Options Regulatory Costs to Customers for activity that may occur across options markets does not impose an undue burden on intra-market competition because the data in the regression model demonstrates that GEMX's Customer regulation occurs to a large extent on Exchange.

The Exchange believes that assessing Firm Proprietary and Broker-Dealer Transactions a different ORF and assessing both a Local ORF and an Away ORF to these transactions does not impose an undue burden on intra-market competition because the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions. With this model, the addition of Firm Proprietary and Broker-Dealer Transactions to the collection of ORF does not entail significant volume when compared to Customer transactions. Unlike Customer transactions, the regulation of Firm Proprietary and Broker-Dealer Transactions occurs both on the Exchange and across options markets. To that end, the Exchange proposes to assess Firm Proprietary and Broker-Dealer Transactions both a Local ORF and an Away ORF.

The Exchange's proposal to allocate the portion of costs differently between the Local ORF and Away ORF does not create an undue burden on intra-market competition. The Exchange believes that each rate reflects the amount of Options Regulatory Costs associated with different types of surveillances and does not create an undue burden on competition as GEMX Members, excluding except Market Makers, would be uniformly assessed either a Local ORF Rate or an Away ORF Rate depending on where the transaction occurred and whether the transaction was executed or cleared by an GEMX Member. Also, the Exchange would uniformly assess the Local ORF Rate and an Away ORF Rate by market participant. The Exchange is responsible for regulating activity on its market as well as activity that may occur across options markets.

The Exchange believes that assessing only Firm Proprietary and Broker-Dealer Transactions an Away ORF does not create an undue burden on intra-market competition because while the regulation of Firm Proprietary and Broker-Dealer Transactions is less resource intensive than the regulation of Customer transactions, the regulation of Firm Proprietary and Broker-Dealer Transactions occurs both on the Exchange and across options markets.[48] The Exchange believes that assessing Firm Proprietary and Broker-Dealer Transactions the same rate for Local ORF and Away ORF is appropriate given the lower volume that is attributed to these Members combined with the activity that is required to be regulated both on the Exchange and across options markets. There are Exchange rules that involve cross market surveillances that relate to activities conducted by Firm Proprietary and Broker-Dealer Members.[49] While not large in number, when compared to the overall number of Exchange rules that are surveilled by GEMX for on-Exchange activity, the Away ORF that would be assessed to Firm Proprietary and Broker-Dealer Transactions would account for those Options Regulatory Costs. Additionally, the Exchange believes that limiting the amount of ORF assessed for activity that occurs on non-GEMX exchanges does not impose a burden on intra-market competition, rather it avoids overlapping ORFs that would otherwise be assessed by GEMX and other options exchanges that also assess an ORF. With this model, Customer transactions would be assessed a higher Local ORF, while not being assessed an Away ORF as compared to Firm Proprietary and Broker-Dealer Transactions. The Exchange believes that this difference in allocation is appropriate and correlates to the degree of regulatory responsibility and Options Regulatory Costs borne by different Members of the Exchange in light of the volume different Members transact on the Exchange.

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.

[48] GEMX pays the Financial Industry Regulatory Authority (''FINRA'') to perform certain cross-market surveillances on its behalf. In order to perform cross-market surveillances, Consolidated Audit Trail (''CAT'') data is utilized to match options transactions to underlying equity transactions. This review is data intensive given the volumes of information that are being reviewed and analyzed.

[49] GEMX conducts surveillances and enforces GEMX Rules, however only a subset of those rules is subject to cross-market surveillance, such as margin and position limits. Of note, some GEMX trading rules are automatically enforced by GEMX's System.

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[50] and Rule 19b–4(f)(2)[51] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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–GEMX–2024–42 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–GEMX–2024–42. 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

[50] 15 U.S.C. 78s(b)(3)(A)(ii).

[51] 17 CFR 240.19b–4(f)(2).

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–GEMX–2024–42 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29623 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101879; File No. SR–NYSECHX–2024–35]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.

December 11, 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 2, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 the Fee Schedule of NYSE Chicago, Inc. (the ''Fee Schedule'') by modifying certain fees and credits applicable to Participants for executions resulting from single-sided orders. 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 the Fee Schedule by modifying certain fees and credits applicable to Participants[4] for executions resulting from single-sided orders, as described below. The Exchange proposes to implement the fee changes effective December 2, 2024.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.''[6] Indeed, equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 1%.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Section E.1 of the Fee Schedule, the Exchange currently charges a fee for removing liquidity and for providing liquidity in single-sided orders in Tape A, B and C securities. For each of Tape A, B and C securities with a share price equal to or greater than $1.00, the Exchange charges a fee of $0.0010 per share for orders that both remove liquidity and provide liquidity.

The Exchange proposes the following changes for single-sided orders in Tape A, B and C securities that remove liquidity and provide liquidity. For each single-sided order in Tape A, B and C

[52] 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] The term ''Participant'' is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be considered a ''member'' of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

securities that removes liquidity, the Exchange proposes to modify the fee from $0.0010 per share to $0.0030 per share. For each single-sided order in Tape A, B and C securities that provides liquidity, the Exchange proposes to replace the current fee of $0.0010 per share with a credit of $0.0029 per share for orders that provide displayed liquidity, and a credit of $0.0014 per share for orders that provide non-displayed liquidity, including Mid-Point Liquidity (''MPL'') Orders.[11]

The proposed rule change is intended to encourage Participants to direct orders that add liquidity, thereby contributing to robust levels of trading, which would benefit all market participants. The Exchange believes that the proposed changes, taken together, will encourage submission of additional liquidity in Tape A, B and C securities to qualify for higher credits, thereby promoting price discovery and transparency and enhancing order execution opportunities for Participants. The Exchange notes that despite the fee increase proposed for orders that remove liquidity, the Exchange's fees remain competitive with the fees to remove liquidity in securities with a share price equal to or greater than $1.00 charged by other equities exchanges.[12]

In connection with the proposed rule change, the Exchange also proposes to amend the heading of Section E. of the Fee Schedule by adding the words ''and Credits.'' With this proposed change, Section E. would be titled ''Transaction and Order Processing Fees and Credits.'' The Exchange similarly proposes to add the words ''and credits'' to the text that immediately follows the pricing table under Section E.1. Additionally, the Exchange proposes to amend the text of paragraph (a) under Section E.1 by adding the word ''fee'' after ''liquidity removing'' and replacing the word ''fee'' with ''credits'' after ''liquidity providing'' and replace the word ''charged'' with ''assessed'' to account for the proposed change to adopt credits payable to Participants under this proposed rule change. Finally, the Exchange proposes to amend the heading titled ''Liquidity Providing Fee'' under Section E.1 of the Fee Schedule to ''Liquidity Providing Rate'' as that column will now contain fees and credits assessed to Participants.

[11] A MPL Order is a limit order that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the Protected Best Bid/Offer or its limit price. *See* NYSE Chicago Rule 7.31(d)(3).

[12] *See infra,* note 17.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. As noted above, based on publicly available information, no single registered equities exchange has more than approximately 20% of the total market share of executed volume of equities trading.[15] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represents less than 1% of the overall market share.[16] The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize Participants to direct orders that add and remove liquidity to the Exchange, which the Exchange believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants.

Fees for Orders That Remove Liquidity

The Exchange believes that the proposed increase to the fees for transactions that remove liquidity in Tape A, B and C securities with a share price equal to or greater than $1.00 is reasonable, equitably allocated and not unfairly discriminatory. Combined with the adoption of credits proposed herein, the purpose of this proposed rule change is to encourage additional liquidity on the Exchange. The proposed pricing structure is designed to continue to encourage Participants to maintain or increase their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed fee for executions of single-sided orders that remove liquidity is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by other equities exchanges.[18] The Exchange further believes the proposed increased fee is fair, equitable and not unfairly discriminatory because the pricing tier will continue to be available to all Participants whose orders remove liquidity. In addition, the Exchange believes that the proposed increased fee is equitable and not unfairly discriminatory as all similarly situated market participants will be subject to the same fee on an equal and non-discriminatory basis.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.*

[16] *Id.*

[17] *See* Regulation NMS, *supra* note 5, 70 FR at 37499.

[18] Cboe EDGA Exchange, Inc. (''EDGA''), for example, charges a fee of $0.0030 per share for orders that remove liquidity in securities priced at or above $1.00. *See* EDGA fee schedule, available at *https://www.cboe.com/us/equities/membership/fee_schedule/edga/*. Long-Term Stock Exchange (''LTSE'') similarly charges a fee of $0.0030 per share for orders that remove liquidity in securities priced at or above $1.00. *See* LTSE fee schedule, available at *https://ltse.com/trading/fee-schedules.*

Credits for Orders That Provide Displayed and Non-Displayed Liquidity

The Exchange believes that the proposed changes to replace the current fee with proposed credits for orders that provide displayed and non-displayed liquidity in Tape A, B and C securities with a share price equal to or greater than $1.00, including MPL Orders, are reasonable, equitable and not unfairly discriminatory. The proposed credits for adding liquidity are reasonable because they would serve to incentivize submission of liquidity to a public exchange, thereby benefiting all Participants. The Exchange believes the proposed credits are also reasonable as they would apply to all Participants. The Exchange believes that providing a credit of $0.0029 per share for executions of single-sided orders that provide displayed liquidity, and a credit of $0.0014 per share for executions of single-sided orders that provide non-displayed liquidity and for MPL Orders is also reasonable because the proposed credits are comparable to credits provided by other equities exchanges.[19]

The Exchange believes that the proposed changes will encourage the submission of a greater number of orders to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for Participants on the Exchange. However, without having a view of Participant's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in a change in trading behavior by Participants. The Exchange believes that the recalibrated fees and credits for orders that add and remove liquidity may provide an incentive for Participants to increase the number of orders they submit to the Exchange, thereby promote price discovery and increased execution opportunities for all Participants.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. Additionally, with respect to MPL Orders, the Exchange believes that the proposed credit is reasonable, equitable and not unfairly discriminatory because it may provide increased opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and thereby increase the quality of order execution on the Exchange, which would benefit all market participants. Moreover, all market participants would be eligible for the proposed credit.

The Exchange also believes that the proposed changes to the text under Section E.1. of the Fee Schedule would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency, thereby reducing potential confusion.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Finally, the submission of orders to the Exchange is optional for Participants in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. 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

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of orders to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for Participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

Intramarket Competition. The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional orders to the Exchange. The Exchange believes that despite the increased fee, Participants would continue to direct their orders to be executed on the Exchange instead of at a competing exchange, given the introduction of credits for adding liquidity. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage Participants to send orders, thereby contributing towards a robust and well-balanced market ecosystem. Additionally, the Exchange believes the proposed credits applicable to orders that provide non-displayed liquidity and to MPL Orders would enhance order execution opportunities for all Participants. The Exchange notes that the current and proposed fees would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated Participants on the same and equal terms, who would benefit from the changes on the same basis.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 1%. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

[19] LTSE, for example, provides a credit of $0.0028 per share for orders that provide displayed liquidity, and a credit of $0.0014 per share for orders that provide non-displayed liquidity. *See* LTSE fee schedule, available at *https://ltse.com/trading/fee-schedules.* NYSE Arca, Inc. (''NYSE Arca''), for example, provides a credit of $0.0010 per share for MPL Orders. *See* NYSE Arca fee schedule, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.*

[20] 15 U.S.C. 78f(b)(8).

[21] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [22] and Rule 19b–4(f)(2) thereunder.[23] 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–NYSECHX–2024–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2024–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSECHX–2024–35 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29626 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101882; File No. SR–FICC–2024–011]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Clearing Agency Investment Policy

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2024, Fixed Income Clearing Corporation (''FICC'') 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 clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Investment Policy (''Investment Policy'', or ''Policy'') of FICC and its affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' and together with FICC and DTC, the ''Clearing Agencies'') [3] and would facilitate changes to the FICC Government Securities Division Rulebook (''GSD Rules'') that will be implemented by FICC.[4]

Specifically, as described in greater detail in the Account Segregation Filing, FICC will implement changes to the GSD Rules that will, among other things, provide for FICC to (1) hold margin collected with respect to the proprietary transactions of a Netting Member separately and independently from the margin collected with respect to transactions that a Netting Member submits to FICC on behalf of indirect participants, (2) legally segregate certain margin collected with respect to indirect participant transactions from the margin for a Netting Member's proprietary transactions (as well as those of other indirect participants), and (3) limit investments of certain margin collected with respect to indirect participant transactions to only U.S. Treasuries with a maturity date of one year or less. The Clearing Agencies are proposing to amend the Policy to facilitate implementation of these changes and would also make other clean-up changes to the Policy, as described in greater detail below.

The changes that were proposed in the Account Segregation Filing and the changes proposed to the Investment Policy herein are collectively designed to comply with certain requirements of Rule 17ad–22(e)(6)(i) under the Act,[5] and to ensure that FICC has appropriate rules to satisfy certain conditions of Note H to Rule 15c3–3a under the Act for a broker-dealer to record a debit in the customer and broker-dealer proprietary account reserve formulas.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79528 (Dec. 12, 2016), 81 FR 91232 (Dec. 16, 2016) (SR–DTC–2016–007, SR–FICC–2016–005, SR–NSCC–2016–003).

[4] *See* Securities Exchange Act Release No. 101695 (Nov. 21, 2024), 89 FR 93763 (Nov. 27, 2024) (SR–FICC–2024–007) (''Account Segregation Filing''). The changes proposed in the Account Segregation Filing are expected to be implemented by no later than March 31, 2025, on a date to be announced by an Important Notice posted to FICC's website. Terms not defined herein are defined in the GSD Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[5] 17 CFR 240.17ad–22(e)(6)(i). *See* Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (''Adopting Release,'' and the rules adopted therein referred to herein as ''Treasury Clearing Rules'').

[6] 17 CFR 240.15c3–3a, Note H. *See id.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Investment Policy governs the management, custody and investment of cash deposited to the respective NSCC and FICC Clearing Funds, and the DTC Participants Fund,[7] the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules. In doing this, the Investment Policy identifies the guiding principles for investments and defines the roles and responsibilities of DTCC[8] staff in administering the Investment Policy pursuant to those principles. The guiding principles for investments set forth in Section 3 of the Investment Policy address, among other things, how the Clearing Agencies segregate and separately hold cash deposited to the NSCC Clearing Fund, the Clearing Fund of FICC's Government Securities Division (''GSD''), the Clearing Fund of FICC's Mortgage-Backed Securities Division (''MBSD'') and the DTC Participants Fund. The Investment Policy also identifies sources of funds that may be invested, and the permitted investments of those funds, including the authority required to make such investments and the parameters of, and limitations on, each type of investment.

[7] The respective Clearing Funds of NSCC, FICC's GSD and FICC's MBSD, and the DTC Participants Fund are described further in the Rules & Procedures of NSCC (''NSCC Rules''), the DTC Rules, By-laws and Organization Certificate (''DTC Rules''), the Clearing Rules of the Mortgage-Backed Securities Division of FICC (''MBSD Rules'') or the GSD Rules, respectively, *available at http://dtcc.com/legal/rules-and-procedures. See* Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules, and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules.

[8] The Depository Trust & Clearing Corporation (''DTCC'') is the parent company of the Clearing Agencies.

The Commission recently adopted amendments to Rule 17ad–22(e)(6)(i) under the Act that are applicable to FICC as a covered clearing agency that provides, through GSD, central counterparty services for transactions in U.S. Treasury securities.[9] These amendments require, among other things, that FICC hold margin from a direct participant for its proprietary transactions separately and independently from the margin calculated and collected for the transactions of an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[10]

In the Treasury Clearing Rules, the Commission also amended its customer protection rule (''Rule 15c3–3'')[11] and the reserve formulas thereunder (''Rule 15c3–3a''),[12] to permit broker-dealers to include margin required and on deposit at FICC as a debit item in the reserve formula under certain conditions. One of the conditions for the relief is that the margin be collected in accordance with the GSD Rules that impose certain requirements, which include, among other things, that FICC (i) only invest cash margin in U.S. Treasuries with a maturity of one year or less, and (ii) must hold the margin itself or at an account of a Federal Reserve Bank or an FDIC-insured bank, which account must be segregated from any other account of FICC or any other person at a U.S. Federal Reserve Bank or FDIC-insured bank and used exclusively to hold customer assets to meet the current margin requirements of FICC resulting from positions in U.S. Treasury securities of the customers of the broker-dealer members of FICC.[13]

In the Account Segregation Filing, FICC proposed changes to the GSD Rules to comply with the requirements of the Treasury Clearing Rules. Such changes are expected to be implemented in the GSD Rules by no later than March 31, 2025 and will, among other things, (1) provide for FICC to calculate, collect, and hold margin for the proprietary transactions of a Netting Member separately and independently from the margin for transactions that the Netting Member submits to FICC on behalf of indirect participants, and (2) allow Netting Members to elect for margin for indirect participant transactions to be calculated on a gross basis (*i.e.,* an indirect participant-by-indirect participant basis) and legally segregated from the margin for the Netting Member's proprietary transactions (as well as those of other indirect participants).[14]

The proposed changes to the Investment Policy would facilitate the implementation of the changes that will be made to the GSD Rules pursuant to the Account Segregation Filing, as described in greater detail below.

i. Separately Holding Indirect Participant Margin

First, the proposed changes to the Investment Policy would facilitate the implementation of the changes to the GSD Rules that will require FICC to calculate, collect, and hold margin for the proprietary transactions of a GSD Netting Member separately and independently from margin collected with respect to transactions that a Netting Member submits to FICC on behalf of indirect participants.

The proposed changes to the Policy would do this by first amending Section 2 to include a definition of Indirect Participants Clearing Fund Deposits to mean ''the total amount deposited in the GSD Clearing Fund to support activity in Agent Clearing Member Omnibus Accounts and Sponsoring Member Omnibus Accounts, other than Segregated Indirect Participants Accounts, as such terms are defined in the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'').'' Next, the proposed changes would amend Section 3.2 (Section 3 describes the guiding principles that underpin the Policy) regarding the separation and segregation of cash deposits to the NSCC, GSD and MBSD Clearing Funds, and the DTC Participants Fund. Within this section, the proposed changes would specify that Indirect Participants Clearing Fund Deposits shall be held separately and independently on FICC's books and records from all other deposits to the GSD Clearing Fund.

In connection with this change, the proposed changes to the Policy would also amend Section 5, which describes investable funds that are invested by the Clearing Agencies pursuant to the Policy. The changes to this section would provide that Indirect Participants Clearing Fund Deposits are included in the GSD Clearing Fund. This proposed change would clarify that these funds are considered investable funds under the Policy, to be invested similarly to other cash deposits to the GSD Clearing Fund.

[9] 17 CFR 240.17ad–22(e)(6)(i).

[10] *Id.*

[11] 17 CFR 240.15c3–3.

[12] 17 CFR 240.15c3–3a.

[13] *Id.*

[14] *Supra* note 4.

ii. Legally Segregating and Limiting Investments of Segregated Customer Margin

Second, the proposed changes to the Investment Policy would facilitate implementation of the changes that will be made to the GSD Rules pursuant to the Account Segregation Filing that will require FICC to legally segregate certain Indirect Participants Clearing Fund Deposits that have been designated by GSD Netting Members for such segregation (''Segregated Customer Margin''), and to hold and invest such funds in a manner that meets the conditions set forth in the Commission's amendments to Rule 15c3–3 and Rule 15c3–3a.[15]

The GSD Rules will describe the manner in which FICC will meet the requirements of Rule 15c3–3 and Rule 15c3–3a with respect to Segregated Customer Margin. The standards that FICC must adhere to in holding, investing and legally segregating Segregated Customer Margin are critical to its Netting Members' ability to obtain certain relief with respect to these funds. Therefore, the Clearing Agencies believe it is appropriate for these provisions to be described publicly in the GSD Rules, which are published to the DTCC website.[16]

While the manner in which FICC would hold and invest Segregated Customer Margin will primarily be described in the GSD Rules, the proposed changes would incorporate Segregated Customer Margin into the Investment Policy such that the general governance and investment philosophy underpinning the Policy, described in Section 3.1 as ''a prudent and conservative investment philosophy that places highest priority on maximizing liquidity and risk avoidance,'' would apply to these funds.

The proposed changes would amend Section 2 to include a definition of Segregated Customer Margin as having ''the meaning given such term in the GSD Rules.'' The proposed changes would also amend Section 3.2 to include a separate statement that refers to the provisions of the GSD Rules, specifically, but not limited to, Section 1a of GSD Rule 4, which would, following implementation of the changes that were proposed by the Account Segregation Filing, address how FICC would segregate and hold Segregated Customer Margin in compliance with the applicable conditions set forth in Rule 15c3–3 and Rule 15c3–3a.

The proposed changes to the Policy would amend Section 5 to identify Segregated Customer Margin as a source of investable funds and to state that ''Segregated Customer Margin is described in the GSD Rules, including, but not limited to, Section 1a of GSD Rule 4.'' The proposed changes to Section 5 would also clarify the description of ''Participants Fund and Clearing Funds'' to make clear that Segregated Customer Margin is not treated as general FICC Clearing Fund. Finally, the proposed changes would include ''Segregated Customer Margin'' as a separate category of ''Allowable Investments'' in Section 6.1, showing that these funds may only be invested in bank deposits, including a Federal Reserve Bank. Under Section 6.2.1, which describes limits on bank deposit investments, the proposed changes would include a statement that refers back to GSD Rule 4 as describing the manner in which Segregated Customer Margin may be invested and would also provide that higher investment limits may be applied to investments of Segregated Customer Margin.

iii. Clean-Up Proposed Changes

The proposed changes to the Policy would replace references to the ''Management Committee'' with the ''senior most management committee,'' which accurately describes this internal governing body without referring to it by formal name. The DTCC Management Committee is comprised of the executive members of DTCC's management team and is the senior most management committee in the organization. The Policy currently requires that certain actions and authorizations described therein be taken by a member of this body. For example, Section 4.3 of the Policy requires that the establishment of any new investment relationships be authorized by specified persons, which include a member of the Management Committee.

The Management Committee has recently changed its name to the Executive Committee. Therefore, the proposed change to replace the formal name of this body would continue to correctly refer to the group but would ensure that the group continues to be accurately described in the Policy in the event of any future changes to its formal name. The proposed changes would include a new defined term for ''senior most management committee'' in Section 2 to provide clarity that this term is intended to refer to the highest-level committee of DTCC. Conforming changes would also be made to Section 4.3 (regarding authorization to establish new investment relationships), Section 6.2.3 (regarding authorization of investment transactions in U.S. Treasury securities), Section 6.2.5 (regarding authorization of investment transactions in high-grade corporate debt) and Section 7.2 (regarding authorization to exceed investment limits).

Implementation Timeframe

The Clearing Agencies expect to implement the proposal by no later than March 31, 2025, or such earlier date on which the changes proposed by the Account Segregation Filing are effective.

2. Statutory Basis

The Clearing Agencies believe that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency, particularly, Section 17A(b)(3)(F) of the Act[17] and Rule 17ad–22(e)(6)(i) under the Act,[18] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a registered clearing agency be designed to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible.[19]

The investment guidelines and governance procedures set forth in the Investment Policy are designed to safeguard funds that are in the custody or control of the Clearing Agencies or for which they are responsible. Such protections include, for example, following a prudent and conservative investment philosophy that places the highest priority on maximizing liquidity and risk avoidance. The Clearing Agencies believe the proposed changes would allow them to continue to adhere to these guidelines by addressing the segregation, separation and investment of Indirect Participants Clearing Fund Deposits and Segregated Customer Margin, consistent with the changes that were proposed in the Account Segregation Filing. The proposed changes would reflect a prudent and conservative investment philosophy by limiting FICC's ability to hold Segregated Customer Margin in either an account of a Federal Reserve Bank or an FDIC-insured bank. Therefore, the Clearing Agencies believe the proposed rule change would allow the Clearing Agencies to continue to operate the Investment Policy pursuant to a prudent and conservative investment philosophy

[15] 17 CFR 240.15c3–3 and 15c3–3a.

[16] *Supra* note 7.

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17ad–22(e)(6)(i).

[19] 15 U.S.C. 78q–1(b)(3)(F).

that assures the safeguarding of securities and funds that are in their custody and control, or for which they are responsible, consistent with Section 17A(b)(3)(F) of the Act.[20]

The proposed changes to more generally describe the senior most management committee would ensure that the Policy remains clear and accurate in describing the governance around important actions described therein. By creating clearer descriptions, the Clearing Agencies believe these proposed changes would make the Investment Policy more effective in governing the management, custody, and investment of funds of and held by the Clearing Agencies. The Clearing Agencies believe the proposed changes would improve the effectiveness of the Investment Policy and allow the Investment Policy to continue to be administered in alignment with the investment guidelines and governance procedures set forth therein. Given that such guidelines and governance procedures are designed to safeguard funds which are in the custody or control of the Clearing Agencies or for which they are responsible, the Clearing Agencies believe the proposed changes are consistent with Section 17A(b)(3)(F) of the Act.[21]

Rule 17ad–22(e)(6)(i) under the Act requires, in part, FICC to establish written policies and procedures reasonably designed to calculate, collect, and hold margin amounts from a direct participant for its proprietary positions in Treasury securities separately and independently from margin calculated and collected from that direct participant in connection with U.S. Treasury securities transactions by an indirect participant that relies on the services provided by the direct participant to access FICC's payment, clearing, or settlement facilities.[22] As described above, the proposed changes would amend Section 3.2, which describes the separation and segregation of cash deposits to the NSCC, GSD and MBSD Clearing Funds, and the DTC Participants Fund. The proposed changes would specify in this section that Indirect Participants Clearing Fund Deposits shall be held separately and independently on FICC's books and records from all other deposits to the GSD Clearing Fund. Together with the changes to be implemented to the GSD Rules pursuant to the Account Segregation Filing, the proposed changes to the Policy would support FICC's compliance with the requirements of Rule 17ad–22(e)(6)(i) by providing that Indirect Participants Clearing Fund Deposits shall be held separately and independently from margin held for GSD Netting Members' proprietary activity.

(B) Clearing Agency's Statement on Burden on Competition

The Clearing Agencies believe that the proposed revisions to the Investment Policy would not have any impact, or impose any burden, on competition. The Investment Policy applies equally to allowable investments of Clearing Fund and Participants Fund deposits, as applicable, of each member of the Clearing Agencies, and establishes a uniform policy at the Clearing Agencies. The proposed changes to the Investment Policy would not effect any changes on the fundamental purpose or operation of this document and, as such, would also not have any impact, or impose any burden, on competition.

The Clearing Agencies do not believe the proposed rule changes to make clean-up changes to the Policy would impact competition. These changes would ensure the clarity and accuracy of the descriptions in the Policy and would not affect participants' rights and obligations. As such, the Clearing Agencies believe the proposed clean-up changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

The Clearing Agencies reserve the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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-regulations/self-regulatory-organization-rulemaking*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2024–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2024–011. 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-regulations/self-regulatory-organization-rulemaking*). 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

[20] *Id.*

[21] *Id.*

[22] 17 CFR 240.17ad–22(e)(6)(i).

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 FICC and on DTCC's website (*www.dtcc.com/legal/sec-rule-filings*). 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–FICC–2024–011 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29628 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101886; File No. SR–Phlx–2024–68]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Fees Based on the Rate of Inflation

December 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2024, Nasdaq PHLX LLC (''Phlx'' 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/phlx/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.

Many market data fees have not changed for years. 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.[3]

The proposed fee increases will apply to three product families: (i) PSX Managed Data Solutions; (ii) Market Data Distributor Fees; and (iii) PSX TotalView. 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

PHLX 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 increases in the amount of information processed, coupled with the need to maintain infrastructure in a high fixed cost environment. The following message rate metrics for the PSX depth of book feed illustrate changes in system demand over time:

- *Peak Rate by Millisecond:* down approximately 6%
- *Average Rate per Millisecond:* up approximately 0.1%
- *Peak Rate per Second:* up approximately 73%
- *Average Rate per Second:* up approximately 79%
- *Peak Total Messages:* up approximately 344%
- *Average Total Messages:* up approximately 283%
- *Average Daily Volume:* down approximately 58%
- *Maximum Message Count:* up approximately 344%

With this increase in message traffic and need to maintain infrastructure, 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 metrics[4] illustrate the increase in message processing speed:

- *Median:* down approximately 40%
- *Average:* down approximately 46%
- *Max:* down approximately 50%

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

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal will adjust for inflation up to August 2024. Depending on inflation thereafter, further adjustments may, or may not, be necessary.

[4] These measurements compare the time difference between events on the matching engine and the time these events are published.

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.[5] 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.[6]

About 10,000 PPIs for individual products and groups of products are tracked and released each month.[7] 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.[8] 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.'' [9]

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.[10]

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.[11]

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.[12] This calculation was repeated for each market data fee.

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:

[5] *See https://fred.stlouisfed.org/series/PCU51825182#0.*

[6] *See https://www.bls.gov/ppi/overview.htm.*

[7] *See https://www.bls.gov/ppi/overview.htm.*

[8] NAICS appears in table 5 of the PPI Detailed Report and is available at *https://data.bls.gov/timeseries/PCU518210518210.*

[9] *See https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-servicesindustry-naics-518210.htm.*

[10] 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.

[11] *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).

[12] 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 exceed the rate of inflation, the Exchange rounded downward.

TABLE 1—PROPOSED INFLATIONARY ADJUSTMENT

Product	Current	2025	2026	2027	Last change	Overall percent change
PSX Managed Data Solutions						
Monthly Administration Fee	$1,500	$1,590	$1,660	$1,686	[13] 1/1/2016	12.4
Monthly Professional Subscriber Fee	150	159	166	168	[14] 1/1/2016	12.4
Market Data Distributor Fees						
Monthly Direct Access	1,000	1,060	1,110	1,137	[15] 10/1/2011	[16] 13.7
Monthly Internal Distributor	500	532	557	568	[17] 10/1/2011	[18] 13.6
Monthly External Distributor	1,250	1,330	1,390	1,421	[19] 10/1/2011	[20] 13.7
PSX TotalView						
Per Subscriber (Indirect Access)	40	42.50	44.50	45.50	[21] 10/1/2011	13.8
Per Subscriber (Indirect Access)	50	52.00	53.50	54.00	[22] 1/1/2018	[23] 8.0
Enterprise License	17,000	17,670	18,190	18,485	[24] 1/1/2018	8.74

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[26] 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 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%.[27] Using the more targeted inflation number of Data Processing PPI, the cumulative inflation rate was 8.07%.[28] 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

[13] *See* Securities Exchange Act Release No. 76799 (December 30, 2015), 81 FR 551 (January 6, 2016) (SR–PHLX–2015–112).

[14] *See id.*

[15] *See* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120).

[16] The change as calculated by the Data Processing PPI index is 13.8%. The actual change is 13.6% due to rounding of the fee.

[17] *See* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120).

[18] The change as calculated by the Data Processing PPI index is 13.8%. The actual change is 13.7% due to rounding of the fee.

[19] *See* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120).

[20] The change as calculated by the Data Processing PPI index is 13.8%. The actual change is 13.7% due to rounding of the fee.

[21] *See* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120).

[22] *See* Securities Exchange Act Release No. 82569 (January 23, 2018), 83 FR 4100 (January 29, 2018) (SR–PHLX–2018–10).

[23] The change as calculated by the Data Processing PPI index is 8.7%. The actual change is 8.0% due to rounding of the fee.

[24] *See* Securities Exchange Act Release No. 82569 (January 23, 2018), 83 FR 4100 (January 29, 2018) (SR–PHLX–2018–10).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4) and (5).

[27] *See https://www.officialdata.org/us/inflation/2019?endYear=2023&amount=1.*

[28] *See https://data.bls.gov/timeseries/PCU518210518210.*

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.

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.[29]

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–Phlx–2024–68 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–Phlx–2024–68. 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–Phlx–2024–68 and should be submitted on or before January 7, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–29632 Filed 12–16–24; 8:45 am]

BILLING CODE 8011–01–P

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 12606]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Anne Frank'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Anne Frank'' at the Center for Jewish History, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of

1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–29621 Filed 12–16–24; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: November 1–30, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. RENEWAL—Coterra Energy Inc.; Pad ID: Smith P3; ABR–20090554.R3; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 14, 2024.

2. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: James Smith; ABR–20091020.R3; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 25, 2024.

3. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Jayne; ABR–20091021.R3; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 25, 2024.

4. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Roundwood; ABR–201410001.R2; Braintrim Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 25, 2024.

5. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: SGL–12 B Drilling Pad; ABR–201410005.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 25, 2024.

6. RENEWAL—Coterra Energy Inc.; Pad ID: HunsingerA P2; ABR–201908010.R1; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 25, 2024.

7. RENEWAL—Coterra Energy Inc.; Pad ID: Teel P1; ABR–20090541.R3; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 25, 2024.

8. RENEWAL—EQT ARO LLC; Pad ID: COP Tract 653 Pad C; ABR–20090415.R3; Beech Creek Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 25, 2024.

9. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 6H; ABR–20090721.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 25, 2024.

10. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Gowan; ABR–20091001.R3; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 27, 2024.

11. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Harry; ABR–20091017.R3; West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 27, 2024.

12. RENEWAL—Coterra Energy Inc.; Pad ID: ButlerL P1; ABR–201405010.R2; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 27, 2024.

13. RENEWAL—Coterra Energy Inc.; Pad ID: Teel P6; ABR–20090543.R3; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 27, 2024.

14. RENEWAL—Seneca Resources Company, LLC; Pad ID: DCNR 595 Pad D; ABR–20090827.R3; Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 27, 2024.

15. RENEWAL—Coterra Energy Inc.; Pad ID: BrooksW P2; ABR–201908009.R1; Springville Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 29, 2024.

16. RENEWAL—EQT ARO LLC; Pad ID: COP Tract 289 Pad B; ABR–20090409.R3; McHenry Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 29, 2024.

17. RENEWAL—Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 293 Pad-A; ABR–201908004.R1; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: November 29, 2024.

18. RENEWAL—Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 729 Pad-A; ABR–201908003.R1; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: November 29, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: December 12, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–29690 Filed 12–16–24; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at the December 12, 2024 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on December 12, 2024, in Harrisburg, Pennsylvania the Commission approved the applications of certain water resources projects and took additional actions, as set forth in the Supplementary Information below.

DATES: December 12, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238–0423, ext. 1312, fax: (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address. See also the Commission website at *www.srbc.gov.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects

identified in the summary above, these actions were also taken: (1) adoption of the 2025 regulatory program fee schedule; (2) approval of a contribution to an abandoned mine drainage project; (3) approval to release a proposed general permit, GP–04 Into-Basin Diversion of Water for public comment; and (4) actions on 16 regulatory program projects.

Project Applications Approved

1. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Susquehanna River), Sheshequin Township, Bradford County, Pa. Application for surface water withdrawal of up to 4.000 mgd (peak day).

2. *Project Sponsor and Facility:* Coterra Energy Inc. (Tunkhannock Creek), Lenox Township, Susquehanna County, Pa. Application for renewal and modification of surface water withdrawal of up to 2.880 mgd (peak day) (Docket No. 20191201).

3. *Project Sponsor and Facility:* Coterra Energy Inc. (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Application for renewal and modification of surface water withdrawal of up to 2.880 mgd (peak day) (Docket No. 20230903).

4. *Project Sponsor and Facility:* Dover Township, York County, Pa. Application for groundwater withdrawal of up to 0.144 mgd (30-day average) from Well 11.

5. *Project Sponsor and Facility:* East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.115 mgd (30-day average) from Well 2A (Docket No. 19990901). *Source and service area are located in an Environmental Justice area.*

6. *Project Sponsor and Facility:* Edgewood by Sand Springs, LLC (Nescopeck Creek), Butler Township, Luzerne County, Pa. Applications for renewal of surface water withdrawal of up to 0.317 mgd (peak day) and consumptive use of up to 0.249 mgd (30-day average) (Docket No. 19980102).

7. *Project Sponsor:* New Enterprise Stone & Lime Co., Inc. Project Facility: Roaring Spring Quarry (Halter Creek 2), Taylor Township, Blair County, Pa. Applications for renewal and modification of consumptive use of up to 0.380 mgd (peak day) and surface water withdrawal of up to 0.288 mgd (peak day) (Docket No. 19940705 and Certificate of Registration No. GF–202204215).

8. *Project Sponsor:* New Enterprise Stone & Lime Co., Inc. Project Facility: Shippensburg Quarry, Southampton Township, Cumberland County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.065 mgd from the Transit Well and 0.020 mgd from the Quarry Well, and consumptive use of up to 0.150 mgd (peak day).

9. *Project Sponsor and Facility:* Newport Borough Water Authority, Oliver Township, Perry County, Pa. Application for renewal and modification of groundwater withdrawal of up to 0.096 mgd (30-day average) from Well 1 (Docket No. 20140908).

10. *Project Sponsor:* Pennsylvania Fish & Boat Commission. Project Facility: Benner Spring State Fish Hatchery, Benner Township, Centre County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.720 mgd from Well 1 (renewal of Docket No. 19940701) and up to 0.311 mgd from Well 3.

11. *Project Sponsor and Facility:* Schuylkill County Municipal Authority, Butler Township, Schuylkill County, Pa. Application for renewal of groundwater withdrawal of up to 0.362 mgd (30-day average) from the Gordon Well (Docket No. 20090624). *Service area is located in an Environmental Justice area.*

12. *Project Sponsor and Facility:* Strasburg Lancaster County Borough Authority, Strasburg Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.275 mgd (30-day average) from the Fisher Well (Docket No. 19890107). *Service area is located in an Environmental Justice area.*

13. *Project Sponsor and Facility:* SWN Production Company, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 2.000 mgd (peak day) (Docket No. 20191209).

14. *Project Sponsor and Facility:* Tallman Family Farms, L.L.C. (Wiconisco Creek), Washington Township, Dauphin County, Pa. Application for surface water withdrawal of up to 0.720 mgd (peak day).

Projects Tabled

15. *Project Sponsor:* The H&K Group. Project Facility: Penn/MD Materials, Fulton Township, Lancaster County, Pa. Applications for consumptive use of up to 0.024 mgd (peak day) and groundwater withdrawals (30-day averages) of up to 1.980 mgd from the Pit Sump, 0.004 mgd from the Primary and Secondary Well, and 0.011 mgd from the Tertiary Well.

16. *Project Sponsor:* Valley CC LLC. Project Facility: Valley Country Club, Sugarloaf Township, Luzerne County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.090 mgd from the Shop Well and up to 0.090 mgd from the Pumphouse Well (Docket No. 20090632).

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 12, 2024.

Jason E. Oyler

General Counsel and Secretary to the Commission.

[FR Doc. 2024–29693 Filed 12–16–24; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Minor Modification Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for previously approved projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: November 1–30, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: *joyler@srbc.gov.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modification, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013–11 and 2015–06, for the time period specified above.

1. Seneca Resources Company—Cowanesque River, Docket No. 20241217, Deerfield Township, Tioga County, Pa.; modification approval to change the intake design; Approval Date: November 13, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: December 12, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–29694 Filed 12–16–24; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway projects will be barred unless the claim is filed on or before the deadline. For the projects listed below, the deadline is May 16, 2025. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2358; email: *Patrick.Lee@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting the local TxDOT office at the address or telephone number provided for each project below.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. US 287 From west of Boyce Road to east of Cooke Road, Ellis County, Texas. This project will construct new frontage roads that will run parallel to the main lanes of US 287. The main lanes will be reconstructed and shifted to accommodate the newly constructed frontage roads. The proposed US 287 will be a divided four-lane highway (two lanes in each direction) with two-lane frontage roads that run parallel to the main lanes (two lanes in each direction). The US 287 main lanes will consist of 12-foot-wide travel lanes with an adjacent 10-foot-wide outside shoulder and an adjacent 4-foot-wide inside shoulder. A 40-foot-wide vegetated median will separate the northbound and southbound US 287 main lanes. This project is approximately 3.9 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on September 21, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320–4480.

2. RM 2871 from IH 30 to US 377, Tarrant County, Texas. The proposed improvements to RM 2871 include reconstructing and widening the existing roadway to a four-lane divided urban roadway with a curbed median, from US 377 in the City of Benbrook north to IH 30 in the City of Fort Worth, for approximately 5.08 miles. Additional improvements include an overpass bridge on RM 2871 over the Union Pacific Railroad and Aledo Road; realignment of Veale Ranch Parkway and Chaparral Pass; left- and right-turn bays and intersection improvements throughout the corridor; and bicycle and pedestrian accommodations on both sides of RM 2871. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on

October 11, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Fort Worth District Office at 2501 S W Loop 820 Fort Worth, TX 76133; telephone: (817) 370–6744.

3. Shiloh Road from West Kingsley Road to West Miller Road, Dallas County, Texas. The project will reconstruct and widen Shiloh Road to a six-lane divided roadway (three lanes in each direction) with 11-foot-wide travel lanes and a raised concrete median that varies from three- to 13-feet wide and contains a dedicated ten-foot-wide left-turn lane for intersecting streets in both directions. There will be a 0.5-foot-wide concrete barrier adjacent to both inside and outside travel lanes that will separate the travel lanes from the raised median and the sidewalk/buffer areas. This project is approximately 1.08 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 22, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320–4480.

4. IH 20 from FM 450 to SH 43, Harrison County, Texas. The project will reconstruct and widen IH 20 from four lanes to six lanes with one-way frontage roads. The proposed roadway typical section will consist of three 12-foot-wide travel lanes in each direction with 10-foot-wide inside and outside shoulders. One-way frontage roads are proposed between FM 450 and FM 3251 north and south of the main lanes. The new frontage roads will consist of two 12-foot-wide travel lanes with an eight-foot-wide outside shoulder and a four-foot-wide inside shoulder. Existing grade-separated interchanges will be improved at FM 450, Galilee Road, FM 968, FM 3251, Cooks Road, and SH 43. Interchange ramps will be widened to 14 feet with a four-foot-wide inside shoulder and a 14-foot-wide outside shoulder, with the exception of ramps at the FM 450 interchange that will be widened to 14 feet with a four-foot-wide inside shoulder and an eight-foot-wide outside shoulder. The project length is approximately 10 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 25, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Atlanta District Office at 701 E Main Street, Atlanta, TX 75551; telephone: (903) 796–2851.

5. US 287 from US 67 to BUS 287, Ellis County, Texas. The project will construct new continuous frontage roads that will run parallel to the main lanes of US 287. The main lanes will be reconstructed and shifted to accommodate the newly constructed frontage roads. The proposed US 287 will be a divided four-lane highway (two lanes in each direction) with two-lane frontage roads that run parallel to the main lanes (two-lanes in each direction). The US 287 main lanes will consist of 12-foot-wide travel lanes with an adjacent 10-foot-wide outside shoulder and an adjacent four-foot-wide inside shoulder. A vegetated median that varies from 40–68 feet wide will separate the northbound and southbound US 287 main lanes. The proposed frontage roads to be constructed parallel to the main lanes consist of 12-foot-wide travel lane with two-foot-wide inside and outside shoulders adjacent to the travel lanes. This project is approximately 8.3 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 31, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320–4480.

6. US 59/US 259 North Nacogdoches (Future I–69) from Stallings Drive/LP 224 to 1.3 mile north of US 259, Nacogdoches County, Texas. The project will bring US 59 and the US 59/US 259 interchange up to current interstate standards by converting it to a controlled access roadway and reconfiguring the interchange. The project will extend for a total of 3.8 miles along US 59 and will include the construction of concrete barrier-divided main lanes along US 59 that consist of four 12-foot-wide travel lanes, two in each direction, 10-foot-wide inside shoulders, and 12-foot-wide outside shoulders. Northbound and southbound US 59 frontage road construction will include two 12-foot-wide travel lanes with a four-foot inside shoulder and a 10-foot-wide outside shoulder. A 10-foot shared use path will also be constructed along the proposed US 59 frontage roads and a 10-foot-wide shared use path and six-foot sidewalk will be constructed along US 259. The project will include reconfiguring the US 59/US 259 interchange to provide new flyover bridges for northbound US 59 and southbound US 259 and a location for truck parking between Stallings Drive/LP 224 and FM 343. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 19, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Lufkin District Office at 1805 N. Timberland Drive, Lufkin, TX 75901; telephone: (936) 634–4433.

7. SH 29 from Haven Lane to Patriot Way, Williamson County, Texas. The project will widen SH 29 from a two-lane to a four-lane roadway with a raised median. A shared use path will be provided on the southern side of SH 29. The project is 2.83 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 20, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone: (512) 832–7000.

8. FM 1378 from FM 3286 to West Lucas Road, Collin County, Texas. The project will consist of widening to a four-lane divided urban roadway. It includes two travel lanes in each direction (two 11-foot lanes with a two-foot inside shoulder and a five-foot outside shoulder). An approximately 16-foot-wide grassy median will separate the eastbound and westbound lanes and will narrow to approximately 5 to 16 feet where turn lanes are proposed. This project is approximately 1.0 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 21, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E Highway 80, Mesquite, TX 75150; telephone: (214) 320–4480.

9. SH 35 from south of North Gordon Street to north of Steele Road, Brazoria

County, Texas. This project will construct four elevated SH 35 main lanes in the median and intersection improvements at FM 528 and Wheeler Rd. The project will also reconstruct the existing SH 35 lanes to serve as frontage roads. The length of the project is approximately 1.33 mile. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 25, 2024, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Houston District Office at 7600 Washington Avenue, Houston, Texas 77007; telephone: (713) 802–5000.

10. FM 2100 from Huffman-Cleveland Road (North) to SH 99 (Grand Parkway), Harris County, Texas. The 5.6-mile-long project will expand the roadway from two lanes to a four-lane divided highway with a sidewalk on one side and a shared use path on the other. Part of the road will be realigned on new location. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on September 13, 2024, and other documents in the TxDOT project file. The EA, FONSI and other documents in the TxDOT project file are available by contacting the TxDOT Houston District Office at 7600 Washington Avenue, Houston, TX 77007; telephone: (713) 802–5000.

11. FM 6 from SH 78 to FM 1777, Collin County, Texas. The project includes reconstruction to an ultimate phase of six 12-foot-wide travel lanes (three lanes in each direction), with an interim phase of four 12-foot-wide lanes (two lanes in each direction). The roadway facility will also include shoulders, dedicated turn lanes, and shared use paths. The shared use paths will be included along both the south and north sides of the roadway alignment. This project is approximately 7.88 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), Finding of No Significant Impact (FONSI) issued on October 16, 2024, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone: (214) 320–4480.

12. FM 1387 from North Midlothian Parkway to FM 664, Ellis County, Texas. The project will include the expansion of the current two-lane roadway to an interim four-lane roadway (ultimate six-lane roadway). The improvements consist of 11- to 12-foot-wide travel lanes with a 10-foot-wide shared use path in the westbound direction and a 5-foot-wide sidewalk in the eastbound direction with a variable-width, raised median. This project is approximately 5.8 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), Finding of No Significant Impact (FONSI) issued on November 13, 2024, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone: (214) 320–4480.

13. SL 390/US 59 Relief Route (Future I–369), from 0.7 mile north of US 80 to I–20, Harrison County, Texas. The project will construct a controlled access roadway with two southbound 12-foot main lanes and two northbound 12-foot main lanes separated by a grassy median. One-way frontage roads will be constructed on either side of the proposed roadway and will consist of two 12-foot travel lanes offset from the main lanes by a grassy median. On- and off-ramps will be constructed throughout the length of the proposed roadway. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), the Finding of No Significant Impact (FONSI) issued on November 20, 2024, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting the TxDOT Atlanta District Office at 701 E. Main Street, Atlanta, Texas 75551; telephone: (903) 796–2851.

Authority: 23 U.S.C. 139(l)(1)

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2024–29756 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

[Docket No.: FHWA–2024–0078]

Section 139 Efficient Environmental Reviews for Project Decisionmaking and One Federal Decision Interim Final Guidance

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: This notice requests comments on FHWA, FRA, and FTA's (collectively the ''Agencies'') revised Section 139 Efficient Environmental Reviews for Project Decisionmaking and One Federal Decision Interim Final Guidance (Interim Final Guidance). This Interim Final Guidance explains the environmental review process and best management practices for the surface transportation projects to which the Section 139 environmental review process applies. This Interim Final Guidance supersedes and replaces the SAFETEA–LU Environmental Review Process Final Guidance, jointly issued by FHWA and FTA in 2006. This Interim Final Guidance reflects statutory amendments to the Section 139 environmental review process and includes information on the FRA and railroad projects.

DATES: This Interim Final Guidance is effective on December 17, 2024. Comments must be received on or before February 18, 2025. Late-filed comments will be considered to the extent practicable.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit comments by only one of the following means:

- *Federal eRulemaking Portal: www.regulations.gov.* This website allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE,

Washington, DC 20590 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

• *Instructions:* You should identify the agency name (Federal Highway Administration, Federal Railroad Administration or Federal Transit Administration) and the docket number at the beginning of your comments. Late comments will be considered to the extent practicable. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Damaris Santiago, Office of Project Development and Environmental Review, (202) 494–2862, *damaris.santiago@dot.gov,* or Ms. Diane Mobley, Office of Chief Counsel, (202) 366–1366, *Diane.Mobley@dot.gov.* For FRA: Ms. Marlys Osterhues, Office of Environmental Program Management, (202) 493–0413, *marlys.osterhues@dot.gov,* or Mr. Faris Mohammed, Office of Chief Counsel, (202) 493–7064, *faris.mohammed@dot.gov.* For FTA: Ms. Megan Blum, Office of Environmental Policy and Programs, (202) 366–0463, *Megan.Blum@dot.gov,* or Mr. Mark Montgomery, Office of Chief Counsel, (202) 366–1017, *mark.montgomery@dot.gov.* Office hours are from 9:00 a.m. to 5:00 p.m., ET, Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of the Interim Final Guidance is available for download and public inspection through *www.regulations.gov* using the docket number listed above, and on the FHWA, FRA and FTA websites, respectively: *www.fhwa.dot.gov, www.railroads.dot.gov,* and *www.transit.dot.gov.* Electronic retrieval assistance and guidelines are also available at *www.regulations.gov.* An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at: *www.FederalRegister.gov* and the U.S. Government Publishing Office's website at: *www.GovInfo.gov.*

Background

Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), (Pub. L. 109–59), codified at 23 U.S.C. 139, prescribed changes to: FHWA and FTA procedures for implementing the National Environmental Policy Act of 1969 (NEPA), as amended; the Council on Environmental Quality's (CEQ) implementing regulations, 40 CFR parts 1500–1508; and FHWA's and FTA's NEPA procedures, 23 CFR part 771. Section 6002 was intended to make the FHWA and FTA environmental review processes more efficient and to protect environmental and community resources.

On November 16, 2006, FHWA and FTA jointly issued guidance (71 FR 66576), titled SAFETEA–LU Environmental Review Process Final Guidance (2006 Guidance). Since the 2006 Guidance, there have been statutory amendments to the Section 139 environmental review process as a result of the following: subtitle c of the Moving Ahead for Progress in the 21st Century Act (MAP–21), (Pub. L. 112–141); section 1304 of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94); section 11301 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, also known as the ''Bipartisan Infrastructure Law'' (BIL)); and amendments to NEPA in section 321 of the Fiscal Responsibility Act (Pub. L. 118–5).

The MAP–21 amended the Section 139 environmental review process by promoting accelerated project delivery through the increased use of categorical exclusions, programmatic approaches and planning and environment linkages.[1] The FAST Act further amended the Section 139 environmental review process by institutionalizing best practices for accelerating complex infrastructure projects without undermining critical environmental laws or opportunities for public engagement. In addition, section 11503 of the FAST Act required FRA to apply the Section 139 environmental review process to railroad projects to the greatest extent feasible. 49 U.S.C. 24201. The BIL further amended the Section 139 environmental review process by codifying the One Federal Decision process for major projects.[2]

In 2023, section 321 of the Fiscal Responsibility Act amended NEPA. However, the Fiscal Responsibility Act did not amend the Sec. 139 environmental review process. The Agencies have harmonized the NEPA amendments and the Sec. 139 environmental review process to the maximum extent possible in the Interim Final Guidance. In a few instances, the Sec. 139 environmental review process provides specific procedural instructions that control for certain types of projects, and these are pointed out in the guidance.

The Agencies are jointly issuing interim final guidance on the Section 139 environmental review process that reflects amendments to 23 U.S.C. 139, including the addition of FRA and applicability to railroad projects, and NEPA, as amended by the Fiscal Responsibility Act. This Interim Final Guidance, currently effective, supersedes and replaces the 2006 Guidance. This Interim Final Guidance will remain in effect until final guidance is issued or this interim final guidance is rescinded. This Interim Final Guidance does not supersede guidance and regulations promulgated by the Agencies under NEPA, including 23 CFR part 771.

Summary of Previous Comments Received

The FHWA and FTA published a proposed revised guidance following enactment of MAP–21 for public comment on March 13, 2015 (80 FR 13458). While the 2015 proposed guidance was never finalized, the Agencies considered all comments in developing this Interim Final Guidance. The Agencies received 11 comments from: one Federal agency (U.S. Department of the Interior), three State departments of transportation (New York, Texas, and Wisconsin), three transit authorities (San Francisco Bay Area Rapid Transit District, San Francisco Municipal Transportation Agency, and Tri-County Metropolitan Transportation District of Oregon), one State agency (State of Arizona Game and Fish Department), and three professional associations (American Public Transportation Association, American Association of State Highway and Transportation Officials, and the American Road & Transportation Builders Association). Seven of the 11 commenters offered general support for the draft guidance, but all 11 commenters suggested revisions to specific questions or answers found in the draft guidance. The Agencies considered all comments in developing this Interim Final Guidance but note that some comments were superseded by the enactment of the FAST Act or other statutory amendments. All comments can be found at: *https://www.regulations.gov/docket/FHWA-2015-0001/comments.*

Request for Comments

The Agencies request comments on this Interim Final Guidance, which is

[1] On March 13, 2015, FHWA and FTA published a notice of availability and accepted public comments on proposed revisions to the guidance to reflect the provisions of MAP–21. However, the proposed guidance was not finalized. All comments received were considered by the Agencies in drafting this Interim Final Guidance.

[2] The term ''major project'' is defined in 23 U.S.C. 139(a)(7).

available in the docket for this notice and on FHWA's, FTA's and FRA's websites. The Agencies will consider any substantive comments received on the Interim Final Guidance and will either revise this interim guidance based on comments received or will finalize this interim guidance.

Authority: 23 U.S.C. 139; Pub. L. 112–141, 126 Stat. 405; Pub. L. 114–94, 129 Stat. 1312; Pub. L. 117–58, 135 Stat. 429; Pub. L. 118–5, 137 Stat. 10; 23 CFR part 771; 40 CFR parts 1500–1508.

Kristin White,

Acting Administrator, Federal Highway Administration.

Amitabha Bose,

Administrator, Federal Railroad Administration.

Veronica Vanterpool,

Deputy Administrator, Federal Transit Administration.

[FR Doc. 2024–29637 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA–2021–0010]

Notice of Availability of Final Policy Guidance for the Capital Investment Grants Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of final policy guidance for the Capital Investment Grants program.

SUMMARY: The Federal Transit Administration (FTA) is making available the agency's final policy guidance for the Capital Investment Grants (CIG) program. This version amends FTA's Initial CIG Policy Guidance published in January 2023, and incorporates feedback FTA received from the public comment on its proposed Policy Guidance published in the **Federal Register** in April 2024. The final guidance has been placed in the docket and posted on the FTA website. The policy guidance complements FTA's regulations that govern the CIG program.

DATES: This final policy guidance is effective January 16, 2025. Companion documents to the CIG Policy Guidance such as reporting instructions, CIG reporting templates, and standard cost category worksheets will be updated on the FTA website prior to the effective date.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, FTA Office of Planning and Environment, telephone (202) 366–5159 or *Elizabeth.Day@dot.gov.*

SUPPLEMENTARY INFORMATION: This final policy guidance document contains binding obligations, which 49 U.S.C. 5334(k) defines as ''a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.'' Under 49 U.S.C. 5334(k), FTA may issue binding obligations if it follows notice and comment rulemaking procedures under 5 U.S.C. 553. Prior to making the amendments announced today, FTA followed such procedures. The policy guidance that FTA periodically issues for the CIG program complements the FTA regulations that govern the CIG program, codified at 49 CFR part 611. The regulations set forth the process that grant applicants must follow to be considered for discretionary funding under the CIG program, and the procedures and criteria FTA uses to rate and evaluate projects to determine their eligibility for discretionary CIG program funding. The policy guidance provides a greater level of detail about the methods FTA uses and the sequential steps a sponsor must follow in developing a project.

Pursuant to 49 U.S.C. 5309(g)(5), FTA is required to publish policy guidance on the CIG program each time the agency makes significant changes to the review and evaluation process and criteria, but not less frequently than once every two years. In April 2024, FTA published a notice in the **Federal Register** (89 FR 24086), seeking comment on proposed changes to FTA's Initial CIG Policy Guidance issued in January 2023 (88 FR 2166), which were informed by feedback FTA received in response to its Request for Information published in the **Federal Register** in July 2021 (86 FR 37402). The amended Final CIG program policy guidance is being made available today on the agency's public website at *https://www.transit.dot.gov/funding/grant-programs/capital-investments/capital-investment-grants-program-regulations-guidance,* and in the docket at *https://www.regulations.gov/docket/FTA-2021-0010/.* Additionally, FTA's response to the comments received on the proposed changes are available in the docket.

FTA is exempting certain projects from following the new amended Final CIG Policy Guidance. Specifically, projects already in the Project Development or Engineering phases of the CIG program as of the date of publication of this notice that have been evaluated and rated at least once by FTA under the January 2023 CIG Policy Guidance and that meet the requirements for receipt of a CIG construction grant award by the end of calendar year 2025 are exempt from following the new amended Final CIG Policy Guidance. These projects may continue to follow the January 2023 Initial CIG Policy Guidance. To demonstrate a project has met the requirements for receipt of a construction grant award by the end of calendar year 2025, the project sponsor must submit a complete construction grant application to FTA no later than September 1, 2025. If a project sponsor desires to have an exempt project evaluated and rated under the new amended Final CIG Policy Guidance rather than the prior January 2023 Initial CIG Policy Guidance, the sponsor may notify FTA of this desire.

Veronica Vanterpool,

Deputy Administrator.

[FR Doc. 2024–29616 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

[Docket Number: DOT–OST–2024–0120]

RIN 2105–AF17

USDOT Federal Flood Risk Management Standard (FFRMS) Interim Guidelines

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The impacts of flooding affect the environment, economic prosperity, and public health and safety across the Nation. The Federal Flood Risk Management Standard (FFRMS) seeks to improve the resilience of communities and Federal assets against the impacts of flooding from extreme events and climate change. DOT has developed these FFRMS Interim Guidelines to advance the goals of the FFRMS and to outline the steps DOT is taking to implement the FFRMS across the Department.

DATES: Comments due by February 18, 2025.

ADDRESSES: You may send comments, identified by docket number DOT–OST–2024–0120 by the following method:

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

FOR FURTHER INFORMATION CONTACT: Heather Holsinger, 202–366–6263, *Heather.Holsinger@dot.gov.*

SUPPLEMENTARY INFORMATION:

Contents:

I. Definitions
II. Background
III. Purpose
IV. Interim Guidelines
V. Exemptions And Exceptions
VI. Resources

Authority: Executive Order 11988, Floodplain Management, among other authorities listed in the interim guidelines.

I. Definitions

For these Interim Guidelines the following definitions apply:

A. Action: The term 'action' means the construction, reconstruction, rehabilitation, or repair of a Federal or federally financed, licensed, or approved transportation improvement (including any relocation housing built or moved to a new site); and the acquisition, management, or disposition of Departmental lands and facilities. (DOT Order 5650.2)

B. Critical Action: The term 'critical action' means any activity for which even a slight chance of flooding would be too great. (E.O. 13690).

C. Base flood: The term 'base flood' means that flood having a 1 percent chance of being exceeded in any given year (commonly known as a 100-year flood). (DOT Order 5650.2)

D. Base floodplain: The term 'base floodplain' means the area which would be inundated by a base flood. (DOT Order 5650.2)

E. Encroachment: The term 'encroachment' means an action within the limits of the base floodplain. (DOT Order 5650.2).

F. Facility: The term 'facility' means any element of the built environment other than a walled or roofed building. (DOT Order 5650.2).

G. FFRMS floodplain: The term 'FFRMS floodplain' means the area subject to flooding as determined by one of the following approaches (E.O. 13690):

- Climate-informed Science Approach (CISA): The elevation and flood hazard area that results from using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science; or
- Freeboard Value Approach (FVA): The elevation and flood hazard area that results from adding an additional 2 feet to the Base Flood Elevation (BFE) and expanding to the corresponding horizontal extent for non-critical actions, and by adding an additional 3 feet to the BFE and expanding to the corresponding horizontal extent for critical actions; or
- 0.2-percent-annual-chance Flood Approach (0.2PFA): The area subject to flooding by the 0.2 percent annual chance flood (also known as the 500-year flood).

H. Natural and Beneficial Floodplain Values: The term ''Natural and beneficial floodplain values' means values that include but are not limited to: natural moderation of floods, water quality maintenance, groundwater recharge, fish, wildlife, plants, open space, natural beauty, scientific study, outdoor recreation, agriculture, aquaculture, and forestry. (DOT 5650.2).

I. Practicable: The term 'practicable' means capable of being done within natural, social, and economic constraints. (DOT 5650.2).

J. Resilience: The term 'resilience,' with respect to a project, means the ability to anticipate, prepare for, or adapt to conditions or withstand, respond to, or recover rapidly from disruptions, including the ability to: (A) resist hazards or withstand impacts from weather events and natural disasters; or reduce the magnitude or duration of impacts of a disruptive weather event or natural disaster on a project; and (B) have the absorptive capacity, adaptive capacity, and recoverability to decrease project vulnerability to weather events or other natural disasters. (23 U.S.C. 101(a)(24)).

K. Significant Encroachment: The term 'significant encroachment' means an action within the limits of the base floodplain resulting in one or more of the following construction or flood-related impacts:

- A considerable probability of loss of human life;
- Likely future damage associated with the encroachment that could be substantial in cost or extent, including interruption of service on or loss of a vital transportation facility; and
- A notable adverse impact on ''natural and beneficial floodplain values'', as defined above.

It is not contemplated that detailed design would be necessary in order to determine whether there is a significant encroachment (DOT 5650.2; see also 23 CFR 650.105(q)).

II. Background

Flood risks impact our environment, economic prosperity, public health, and safety. Floods can lead to damaged roads, bridges, rail systems, and other transportation infrastructure, and threaten the long-term investments that Federal, State, and local governments are making in transportation infrastructure. Flooding may also result in disrupted transit service or closed roads, potentially limiting access to key evacuation routes during extreme weather events. Climate change is expected to continue to have significant impacts on current and future flood risks, with associated increases in flood damages and risk to human life in many areas of the United States.

A unified Federal approach to address the impacts of flooding began in 1966, with President Johnson's Executive Order (E.O.) 11296 (Floodplain Management). President Carter's E.O. 11988 (Floodplain Management) (May 24, 1977) was executed in order to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative. E.O. 11988 provided the definitions for ''base flood'' as a flood which has a one percent or greater chance of occurrence in any given year and ''floodplain'' as the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. E.O. 11988 requires agencies to take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains. This includes avoiding siting an action within the base floodplain, unless it is the only practicable alternative, and in those cases designing or modifying the action to minimize potential harm to or within the floodplain.

Federal agencies have implemented and complied with E.O. 11988 through various Orders, regulations, and guidance applicable to their specific missions. For example, USDOT Order 5650.2 (Floodplain Management) sets forth policies and procedures applicable to all USDOT operational agencies for the avoidance and mitigation of adverse floodplain impacts in agency actions, planning programs, and budget requests. Agency floodplain policies and procedures are closely aligned with the National Environmental Policy Act (NEPA) process and documented within an action's NEPA review. Complying with the requirements of USDOT Order 5650.2 (or any USDOT Operating Administration equivalent) ensures that USDOT actions and actions of recipients of USDOT funds or approvals align with E.O. 11988.

On January 30, 2015, in order to improve the Nation's resilience to

current and future flood risk, President Obama issued E.O. 13690 establishing a Federal Flood Risk Management Standard (FFRMS) which is a flexible framework to incorporate the most recent climate science into planning, NEPA procedures, and other processes for all federally funded actions. E.O. 13690 was revoked by E.O. 13807 on August 15, 2017, by President Trump. On May 20, 2021, President Biden issued E.O. 14030 that reinstated E.O. 13690 thereby reestablishing the FFRMS. Building on existing floodplain management requirements, the FFRMS takes into account changing flood hazards due to climate change and other processes (*e.g.,* land use), redefining the base floodplain using one of three approaches to determine the vertical flood elevation and corresponding horizontal extent of the floodplain. (*i.e.,* the FFRMS floodplain).

III. Purpose

The USDOT is implementing E.O. 11988, as amended by E.O. 13690, by integrating the principles of all Executive Orders and the FFRMS into the Department's activities, policies, and programs, consistent with applicable law and subject to the availability of appropriations. USDOT is taking the following steps to implement the FFRMS in USDOT actions and programs:

- Including the FFRMS in applicable USDOT discretionary grant criteria or selection considerations: USDOT has included language in many BIL discretionary grant Notice of Funding Opportunities (NOFOs) indicating that applications should describe if projects will be constructed consistent with the FFRMS, to the extent consistent with current law. This provides applicants with an opportunity to better understand the potential risks from future flooding for these projects, as well as to demonstrate the steps they are taking to address those risks for proposed projects. (Timeframe: Ongoing)
- New USDOT Floodplains Management and Protection Rulemaking: USDOT is initiating a rulemaking, to provide the requirements that USDOT actions must consider when evaluating proposed transportation infrastructure located within a designated floodplain, including avoidance and mitigation of adverse floodplain impacts using the FFRMS. (Timeframe: Expected completion in 2025)
- Updating USDOT Order 5620.2: USDOT will revise DOT Order 5650.2 to reflect E.O. 13690 and the FFRMS along with the anticipated Floodplains Management and Protection Final Rule. Anticipated revisions include updating the overall policy to reflect USDOT's intent to improve the resilience of transportation infrastructure against the impacts of current and future flooding; to use the Climate-informed Science Approach (CISA), where appropriate, to determine floodplain risk; and, where possible, to use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration. USDOT will update Order 5650.2 concurrently with the new USDOT Floodplains Management and Protection rulemaking (Timeframe: Expected completion in 2025).
- Operating Administration Updates to Policies and Programs: As the Department proceeds with its update to USDOT Order 5650.2 and the new USDOT Floodplains Management and Protection rulemaking, USDOT's Operating Administrations are reviewing their existing programs and policies to incorporate the FFRMS, as appropriate, and to identify any additional resources or guidance that may be needed.

USDOT is issuing these Interim Guidelines to advance the goals of the FFRMS as we complete the steps outlined above to fully implement the FFRMS and all relevant provisions included in E.O. 14030 and E.O. 13690. USDOT anticipates that these Interim Guidelines will be superseded by the forthcoming USDOT Floodplains Management and Protection rulemaking and the update to USDOT Order 5620.2.

USDOT encourages the use of currently available USDOT and other Federal resources and tools (such as FHWA's HEC–17 and HEC–25, and other resources referenced in these Interim Guidelines) to apply FFRMS approaches to improve the resilience of projects. Moreover, the Department intends to conduct extensive stakeholder engagement to ensure that our resilience initiatives are responsive to the needs of our partners as we work toward full implementation of the FFRMS in our actions and programs. During this interim period, USDOT encourages the public to submit questions and provide feedback via *https://www.regulations.gov/.*

IV. Interim Guidelines

The USDOT is committed to integrating climate resilience and risk management approaches into all phases of transportation decision making, including planning, environmental review/NEPA, final design, construction, operations, and monitoring and maintenance. As part of this commitment, the USDOT encourages all actions (*i.e.,* the construction or reconstruction of a Federal or federally financed, licensed, or approved transportation improvement) to determine if that action is within the FFRMS floodplain, to adopt measures that address and manage identified flood risk, and to document these analyses in the NEPA [1] environmental review process for the action. In developing these analyses, the FFRMS floodplain should be established using one of the following approaches:

- Climate-informed Science Approach (CISA). The elevation and flood hazard area (*i.e.,* geographic extent of the elevation's corresponding floodplain) that results from using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach will also include an emphasis on whether the action is a significant encroachment as one of the factors to be considered when conducting the analysis.
- Freeboard Value Approach (FVA). The elevation and flood hazard area that results from adding an additional 2 feet to the Base Flood Elevation (BFE) and expanding to the corresponding horizontal extent for non-critical actions, and by adding an additional 3 feet to the BFE and expanding to the corresponding horizontal extent for critical actions.
- 0.2-Percent-annual-chance Flood Approach (0.2PFA) The area subject to flooding by the 0.2 percent annual chance flood (also known as the 500-year flood).

Consistent with USDOT's support for incorporating future climate risk exposure within our overall programs, USDOT prefers the CISA to establish the FFRMS floodplain when data to support such an analysis is available.

USDOT recognizes that each action may necessitate application of the approach best suited for its location, taking into consideration unique characteristics and risks associated with that action, as well as available data. For example, where CISA data is not available or is not actionable, projects may use the FVA or the 0.2 PFA to identify the FFRMS floodplain. In using the FVA instead of CISA, project proponents and reviewers should consider whether the application of two feet (or three feet) of freeboard suitably

[1] 42 U.S.C. 4321 *et seq.*

captures any associated flood risk [2] and consider modifications as appropriate.[3] In addition, when considering the 0.2 PFA approach, note that (1) approximately only 20 percent of FEMA Flood Insurance Rate Maps (FIRMs) maps include the 500-year floodplain and (2) in the coastal scenario, the 500-year floodplain may not include the added risk of wave effects. Sponsors of Departmental actions should consider these elements as they select a particular approach to establishing the FFRMS floodplain.

USDOT has existing resources in place to advance the goals of the FFRMS and assist sponsors of USDOT-funded actions in establishing the FFRMS floodplain. These resources and tools, combined with existing floodplain regulations, provide options on the many opportunities to build resilience to flooding into the planning and construction of transportation projects. For example, FHWA has developed and continues to refine a range of procedures, tools, and guidance documents to help transportation agencies address climate change when designing roads, bridges, culverts, and drainage infrastructure. This includes revising projected climate risks associated with floods and severe storms. USDOT encourages sponsors of USDOT-funded actions to consult these and other resources for technical guidance on incorporating resilience principles in transportation infrastructure design (See Section F on Resources). In addition, USDOT is coordinating with the Council on Environmental Quality and other Federal agencies in the development of additional guidance and tools to assist sponsors of federally funded actions in implementing the FFRMS.

These interim guidelines do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide interim guidance to the public regarding how to establish the FFRMS floodplain under E.O. 13690 and to describe the steps USDOT is taking to fully implement the FFRMS across its actions and programs. It will not be deemed to create any right, benefit or trust obligation either substantive or procedural, enforceable by any person, or entity in any court against USDOT agencies, its officers, or any other person. Compliance with this guidance will not be justiciable in any proceedings for judicial review of USDOT agency action.

V. Exceptions and Simplified Reviews for Certain Classes of Actions

The head of a USDOT Operating Administration (*e.g.,* Federal Highway Administration, Federal Transit Administration, etc.) may except an agency action from the FFRMS floodplain requirement where it is in the interest of national security, where the agency action is an emergency action, where application to a Federal facility or structure is demonstrably inappropriate, or where the agency action is a mission-critical requirement related to a national security interest or an emergency action. When an agency action is excepted because it is in the interest of national security, it is an emergency action, or it is a mission-critical requirement related to a national security interest or an emergency action, the Operating Administration head shall rely on the area of land subject to the base flood. (*i.e.,* 1 percent annual chance).

In addition, with the promulgation of a USDOT floodplain management and protection regulation and update to Order 5650.2 that incorporates the FFRMS, USDOT Operating Administrations may identify individual actions, or categories of actions, which would have shortened or altered decision making processes (for example, those with limited potential to adversely affect the floodplain). USDOT Operating Administration may also conduct general review of activities in lieu of site-specific reviews for certain actions and class reviews of certain repetitive actions.

VI. Resources

Executive Office of the President

- *E.O. 11988 Floodplain Management.* Available at: *https://www.federalregister.gov/executive-order/11988* Last accessed November 1, 2024.
- *E.O. 13690 Establishing Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.* Available at: *https://www.federalregister.gov/documents/2015/02/04/2015-02379/establishing-a-federal-flood-risk-management-standard-and-a-process-for-further-soliciting-and* Last accessed November 1, 2024
- *E.O. 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.* Available at: *https://www.federalregister.gov/documents/2021/01/25/2021-01765/protecting-public-health-and-the-environment-and-restoring-science-to-tackle-the-climate-crisis* Last accessed November 1, 2024
- *E.O. 14008 Tackling the Climate Crisis at Home and Abroad.* Available at: *https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad* Last accessed November 1, 2024
- *E.O. 14030 Climate-Related Financial Risk.* Available at: *https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk* Last accessed November 1, 2024.
- *Climate Mapping for Resilience and Adaptation* (CMRA). CMRA integrates information from across the federal government on local exposure to climate-related hazards, including flood risk and sea level rise projections. Available at: *https://resilience.climate.gov/.* Last accessed November 1, 2024.
- *Federal Flood Risk Management Standard, Appendix G of October 2015 Implementation Guidelines.* Available at: *https://www.fema.gov/sites/default/files/documents/fema_IGA-appendices-a-h_10082015.pdf.* Last accessed November 1, 2024.
- *Federal Flood Risk Management Standard Climate-Informed Science Approach (CISA)—State of the Science Report.* This report provides a review and update of the best-available, actionable science that can support application of the Climate-Informed Science Approach (CISA), reflecting science and technology advancements made since E.O. 13690 was issued in 2015. Available at: *https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf.* Last accessed November 1, 2024.
- *FFRMS Floodplain Determination Job Aid.* The Flood Resilience Interagency Working Group released this FFRMS Floodplain Determination Job Aid to support agencies' implementation of federal flood programs and regulations, including FFRMS. Available at: *https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf.* Last accessed November 1, 2024.
- *Federal Flood Standard Support Tool.* The White House Flood Resilience Interagency Working Group developed a Federal Flood Standard Support Tool (FFSST) to enable users to identify the FFRMS floodplain more easily. Available at: *https://floodstandard.climate.gov/.* Last accessed November 1, 2024.

United States Department of Transportation

- *USDOT Order 5650.2. Floodplain Management and Protection.* Available at: *https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Floodplain.pdf.* Last accessed November 1, 2024.
- *FAA Order 1050.1F Desk Reference (v2), Chapter 14 Water Resources, Section 14.2 Floodplains.* Available at: *https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/apl/14-water-resources.pdf.* Last accessed November 1, 2024.

[2] The FVA does not account for differences in local conditions or future flood risks associated with climate change.

[3] See FHWA's HEC–17 and HEC–25 for examples of considerations to take into account with regards to extreme weather and climate change when siting transportation infrastructure in the riverine and coastal environment.

- *FHWA Hydraulic Engineering Circular (HEC) 25,* ''*Highways in the Coastal Environment*''. Provides technical guidance and methods for assessing the vulnerability of roads and bridges to extreme events and climate change in coastal areas, focusing on sea level rise, storm surge, and waves. Available at *https://www.fhwa.dot.gov/engineering/hydraulics/pubs/hif19059.pdf.* Last accessed November 1, 2024.
- *FHWA Hydraulic Engineering Circular (HEC) 17,* ''*Highways in the River Environment—Floodplains, Extreme Events, Risk and Resilience*''. Provides technical guidance and methods for assessing the vulnerability of transportation facilities to extreme events and climate change in riverine environments. Available at *https://www.fhwa.dot.gov/engineering/hydraulics/pubs/hif16018.pdf.* Last accessed November 1, 2024.
- *FHWA Nature-Based Solutions for Coastal Highway Resilience: An Implementation Guide.* This guide follows the steps in the transportation project delivery process, providing information on planning, site assessment, design, permitting, construction, monitoring, maintenance, and adaptive management of nature-based solutions in the transportation context. Available at: *https://www.fhwa.dot.gov/environment/sustainability/resilience/ongoing_and_current_research/green_infrastructure/implementation_guide/fhwahep19042.pdf.* Last accessed November 1, 2024.
- *FHWA Transportation Engineering Approaches to Climate Resiliency (TEACR) Synthesis report and case studies.* This report synthesizes lessons learned and innovations from recent FHWA studies and pilots to help transportation agencies address changing climate conditions and extreme weather events at the asset level. It is designed to provide needed information to a range of engineering disciplines to integrate climate considerations into transportation project development. Available at: *https://www.fhwa.dot.gov/environment/sustainability/resilience/ongoing_and_current_research/teacr/synthesis/.* Last accessed November 1, 2024.
- *US DOT Gulf Coast 2 Study.* The Gulf Coast Study produced tools and lessons learned that transportation agencies across the country are using to assess vulnerabilities and build resilience to climate change. Available at: *https://www.fhwa.dot.gov/environment/sustainability/resilience/ongoing_and_current_research/gulf_coast_study/index.cfm.* Last accessed November 1, 2024.
- *FHWA Post-Hurricane Sandy Transportation Resilience Study in New York, New Jersey, and Connecticut.* Study intended to inform transportation agency efforts to address changing climate conditions and extreme weather events from a regional planning level to facility level assessments. Available at: *https://www.fhwa.dot.gov/environment/sustainability/resilience/publications/hurricane_sandy/fhwahep17097.pdf.* Last accessed November 1, 2024.
- *FHWA Resilience Pilots.* FHWA has partnered with State Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs) and others on 46 pilot projects to develop and deploy resilience solutions to current and future extreme weather events. Available at: *https://www.fhwa.dot.gov/environment/sustainability/resilience/pilots/*Last accessed November 1, 2024.
- *CMIP Climate Data Processing Tool 2.1.* Accesses and calculates climate projections for temperature and precipitation variables. Available at: *https://www.fhwa.dot.gov/engineering/hydraulics/software/cmip_processing_tool_version2.cfm.* Last accessed November 1, 2024.
- *FHWA NHI course FHWA–NHI–135082 Highways in the Coastal Environment.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=135082&sf=0&course_no=135082.* Last accessed November 1, 2024.
- *FHWA NHI course FHWA–NHI–135082A Future Sea Levels for the Design of Highways in the Coastal Environment.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=FHWA-NHI-135082&sf=0&course_no=135082A* Last accessed November 1, 2024.
- *FHWA NHI Course FHWA–NHI–135082C Water Levels for the Design of Highways in the Coastal Environment.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=FHWA-NHI-135082&sf=0&course_no=135082C* Last accessed November 1, 2024.
- *FHWA NHI Course FHWA–NHI–142085A Addressing Climate Resilience in Highway Project Development and Preliminary Design.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=FHWA-NHI-135082&sf=0&course_no=135082C* Last accessed November 1, 2024.
- *FHWA NHI Course FHWA–NHI–142081 Understanding Past, Current and Future Climate Conditions.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=142081&sf=0&course_no=142081* Last accessed November 1, 2024.
- *FHWA NHI Course FHWA–NHI–142082 Introduction to Temperature and Precipitation Projections.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=142082&sf=0&course_no=142082* Last accessed November 1, 2024.
- *FHWA NHI Course FHWA–NHI–142083 Systems Level Vulnerability Assessments.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=142083&sf=0&course_no=142083* Last accessed November 1, 2024.
- *FHWA NHI Course FHWA–NHI–142084 Adaptation Analysis for Project Decision Making.* Available at: *https://www.nhi.fhwa.dot.gov/course-search?tab=0&key=142084&sf=0&course_no=142084* Last accessed November 1, 2024.
- *FTA Hazard Mitigation Cost Effectiveness Tool.* Resilience benefit cost tool enables transit agencies to conduct a robust cost-benefit analysis of resilience projects being considered for funding, leading to informed decisions on the benefits of investing in resilience projects. Available at: *https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/hazard-mitigation-cost-effectiveness-hmce-tool* Last accessed November 1, 2024.
- *FTA Emergency Relief Manual.* Available at: *https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/emergency-relief-manual-reference-manual-states* Last accessed November 1, 2024.
- *FTA Transit and Climate Change Adaptation: Synthesis of FTA-Funded Pilot Projects.* Available at: *https://www.transit.dot.gov/sites/fta.dot.gov/files/FTA_Report_No._0069_0.pdf* Last accessed November 1, 2024.
- *FTA Transit Resilience Guidebook.* Presents recommendations and examples of how to identify and address climate vulnerabilities and risks and build resilience into transit assets throughout the life-cycle process. Available at: *https://www.transit.dot.gov/research-innovation/ftas-transit-resilience-guidebook* Last accessed November 1, 2024.

December 12, 2024.

Ann Shikany,

Deputy Assistant Secretary for Policy.

[FR Doc. 2024–29801 Filed 12–16–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Meaningful Access Information Collections

AGENCY: Bureau of Engraving and Printing, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Bureau of Engraving and Printing (BEP), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 18, 2025.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect

of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Tracy Garrett by emailing *Tracy.Garrett@bep.gov,* calling (202) 874–3256, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Generic Clearance for Meaningful Access Information Collections.

OMB Control Number: 1520–0009.

Type of Review: Extension without change.

Description: A court order was issued in *American Council of the Blind* v. *Paulson,* 591 F. Supp. 2d 1 (D.D.C. 2008) (''*ACB* v. *Paulson*'') requiring the Department of the Treasury and BEP to ''provide meaningful access to United States currency for blind and other visually impaired persons, which steps shall be completed, in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury . . . .''

In compliance with the court's order, BEP intends to meet with blind and visually impaired persons and request their feedback about tactile features that BEP is considering for possible incorporation into the next U.S. paper currency redesign. BEP employees will attend national conventions and conferences for disabled persons, as well as focus groups and other meetings. At those gatherings, BEP employees will invite blind and visually impaired persons to provide feedback about certain tactile features being considered for inclusion in future United States currency paper designs. In the past BEP contracted with specialists in the field of tactile acuity to develop a methodology for collecting the feedback. This same or substantially similar methodology will be used to continue this information collection.

Over the next three years, the BEP anticipates undertaking a variety of new information collection activities related to BEP's continued efforts to provide meaningful access to U.S. paper currency for blind and visually impaired persons. Following standard OMB requirements, for each information collection that BEP proposes to undertake under this generic clearance, the OMB will be notified at least two weeks in advance and provided with a copy of the information collection instrument along with supportive materials. The BEP will only undertake a new collection if the OMB does not object to the BEP's proposal.

Form: None.

Affected Public: Individuals and households, Businesses and other for-profits, Not-for-profit Institutions.

Estimated Number of Respondents: 650.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 650.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 650 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Katherine A. Allen,

BEP PRA Clearance Officer.

[FR Doc. 2024–29704 Filed 12–16–24; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0609]

Agency Information Collection Activity Under OMB Review: Survey of Veteran Enrollees' Health and Use of Health Care

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by January 16, 2025.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments,'' then search the list for the information collection by Title or ''OMB Control No. 2900–0609.''

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: Survey of Veteran Enrollees' Health and Use of Health Care.

OMB Control Number: 2900–0609 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Revision of a currently approved collection.

Abstract: The VA Survey of Veteran Enrollees' Health and Use of Health Care gathers information from Veterans enrolled in the VA Health Care System about factors that influence their health care utilization choices. The original authority for this information collection is from Public Law 104, section 262, Veterans' Health Care Eligibility Reform Act of 1996. Data collected are used to gain insights into Veteran preferences and to provide VA and Veterans Health Administration (VHA) management guidance in preparing for future Veteran needs. In addition to factors influencing health care choices, the data collected include enrollees' perceived health status and need for assistance, available insurances, self-reported utilization of VA services versus other health care services, reasons for using VA, barriers to seeking care, ability and comfort level with accessing virtual care, as well as general demographics and family characteristics that may influence utilization but cannot be accessed elsewhere. Based upon historical program data, the survey has been revised to remove some questions and add other questions, and certain questions are asked only in alternating years. Further, the target sample of respondents has been decreased to reduce costs and reduce burden on Veterans, while maintaining the

integrity of the data. Information provided through the survey supports critical VA policy decisions.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 81991, October 9, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 13,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 40,000.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–29678 Filed 12–16–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Agency Information Collection Activity Under OMB Review: Request for Determination of Reasonable Value Real Estate

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by January 16, 2025.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0045.''

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Determination of Reasonable Value Real Estate (VA Forms 26–1805, and 26–1805–1).

OMB Control Number: 2900–0045 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Revision of a currently approved collection.

Abstract: VA utilizes Form 26–1805 (paper form) and 26–1805–1 (digital form) for lenders to request an appraisal and assign an appraiser (*i.e.,* ''ordering'' an appraisal), which ultimately provides the appraiser with the authority to be on the property to conduct the appraisal (*i.e.,* an engagement letter). This information collection request seeks to expand this data collection clearance to encompass a modernized, end-to-end appraisal management process. Under this ICR extension, VA will capture information from lenders around when an appraisal has been ordered (current VA Form 26–1805), but will also capture information and workflow associated with the assignment, scheduling, and review of an appraisal by VA or a lender. This process will be consistent with the rest of the mortgage industry, and will align VA's appraisal process with the industry standard.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 82304, October 10, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 467,100.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: One-time per appraisal.

Estimated Number of Respondents: 519,000.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–29659 Filed 12–16–24; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 89 Tuesday,
No. 242 December 17, 2024

Part II

Office of Personnel Management

5 CFR Parts 630 and 752
Administrative Leave, Investigative Leave, and Notice Leave; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 630 and 752

RIN 3206–AN59

Administrative Leave, Investigative Leave, and Notice Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule on the acceptable uses and proper recording of administrative leave, investigative leave, and notice leave for covered Federal employees. The Administrative Leave Act of 2016 created these categories of statutorily authorized paid leave and set parameters for their use by Federal agencies. OPM prescribes this final rule to carry out the Act and guide agencies regarding these leave categories.

DATES:

Effective date: This final rule is effective on January 16, 2025.

Compliance date: Agencies must issue internal policies consistent with this rule and any applicable collective bargaining obligations no later than September 13, 2025.

FOR FURTHER INFORMATION CONTACT: For matters related to general administrative leave, Bryce Baker by email at *LeavePolicy@opm.gov* or by telephone at (202) 606–2858; for matters related to investigative leave or notice leave, Timothy Curry by email at *employeeaccountability@opm.gov* or by telephone at (202) 606–2930.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Office of Personnel Management (OPM) is issuing a final rule regarding the administrative leave, investigative leave, and notice leave provisions of the Administrative Leave Act of 2016.[1] The Act added three new sections in title 5, U.S. Code, that provide for specific categories of paid leave and requirements that apply to each: section 6329a regarding administrative leave; section 6329b regarding investigative leave and notice leave; and section 6329c regarding weather and safety leave.[2]

The Act charged OPM with prescribing regulations to carry out sections 6329a, 6329b, and 6329c and guide agencies regarding these new leave categories no later than 270 calendar days after the Act's enactment on December 23, 2016, *i.e.,* by September 19, 2017. OPM published proposed regulations for all three sections on July 13, 2017,[3] and issued regulations implementing § 6329c, weather and safety leave, on April 10, 2018.[4]

OPM now prescribes a final rule regarding acceptable uses and proper recording of administrative leave to carry out section 6329a, as well as regulations regarding acceptable uses and proper recording of investigative leave and notice leave, baseline factors agencies must consider regarding investigative leave, and procedures for the approval and the extension of investigative leave to carry out section 6329b.

II. Background

Prior to passage of the Administrative Leave Act, there was no specific statutory authority for the use of administrative leave, which is an excused absence without loss of pay or charge to leave. Agencies granted paid excused absences (which they often called ''administrative leave'') to employees based on statutes, like 5 U.S.C. 301–302, that provide heads of agencies broad authority to manage their workforces.

While sections 301–302 do not expressly address excused absence and do not set parameters on its use, some direction on agency discretion to use the excused absence authority was provided in Comptroller General decisions and in past OPM guidance via governmentwide memorandums, handbooks, fact-sheets, and frequently asked questions.[5] In that guidance, OPM provided that the use of administrative leave should be limited to those circumstances in which the employee's absence is not specifically prohibited by law and satisfies one or more of the following criteria: (1) it is directly related to the agency's mission, (2) it is officially sponsored or sanctioned by the agency, (3) it will clearly enhance professional development or skills of the employee in the employee's current position, or (4) it is determined to be in the interest of the agency or of the Government as a whole.

In drafting the Administrative Leave Act, Congress considered an October 2014 report entitled ''Federal Paid Administrative Leave,'' prepared by the Government Accountability Office (GAO) at Congress' request.[6] GAO examined the paid administrative leave policies at five selected Federal agencies.[7] It reviewed practices in recording and reporting of paid administrative leave and described categories of purposes for which large amounts of paid administrative leave have been charged. GAO found that agency policies on administrative leave varied and that some employees were on administrative leave for long periods of time. These periods had significant cost implications. GAO found that the ''predominant reason'' for ''large amounts of administrative leave was personnel matters, which was cited as a reason for paid administrative leave at all five of [the] selected agencies.'' These personnel matters included ''investigations into alleged misconduct, criminal matters, or security concerns as well as settlement agreements, pending adverse actions due to inappropriate behavior, and interim relief.'' These matters concluded in a variety of ways, including ''removal, retirement, resignation, reinstatement of [the] employee, and settlement agreement[s].'' GAO also found variations in agencies' recording and reporting practices with respect to administrative leave and that there was no reliable data on the amount of administrative leave by type of use (*e.g.,* weather and safety reasons, personnel investigation reasons).

GAO concluded that ''Federal agencies have the discretion to grant paid administrative leave to employees to help manage their workforces when it is in their best interest to do so. This discretion is important in ensuring that employees are not placed in dangerous circumstances, have access to professional development opportunities, and are able to participate in civic activities during work hours,'' but that administrative leave should be managed effectively since it is a cost to the taxpayer. GAO made two recommendations: that OPM, in coordination with agencies, (1) develop guidance on which activities to enter, or

[1] Enacted under section 1138 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328, 130 Stat. 2000, Dec. 23, 2016).

[2] In this preamble, references to statutory provisions in title 5, U.S. Code, will generally be referred to by section number without restating the title 5 reference (*e.g.,* section 6329a instead of 5 U.S.C. 6329a). Also, references to regulatory provisions in title 5, Code of Federal Regulations, will generally be referred to by section number without restating the title 5 reference (*e.g.,* § 630.1401 instead of 5 CFR 630.1401).

[3] 82 FR 32263.

[4] 83 FR 15291.

[5] *See, e.g.,* Off. of Pers. Mgmt., ''Fact Sheet: Administrative Leave,'' at *https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/administrative-leave/.*

[6] *See* Gov't Accountability Off., ''Federal Paid Administrative Leave,'' Oct. 2014, at *https://www.gao.gov/assets/gao-15-79.pdf.*

[7] The five agencies GAO reviewed were the Departments of Defense, the Interior, and Veterans Affairs, the General Services Administration, and the U.S. Agency for International Development.

not enter, as paid administrative leave in agency time and attendance systems, and (2) provide updated and specific guidance to payroll service providers on which activities to report, or not report, to the paid administrative leave data element in the Enterprise Human Resources Integration database.

Congress extensively cited the GAO report in 2016 House and Senate committee reports regarding draft bills for Federal administrative leave.[8] Those committee reports also included background information on the development of the legislative text that eventually became the Administrative Leave Act. As discussed further, below, while Congress sought to address and better record all forms of paid administrative leave, its primary focus when enacting the Administrative Leave Act was on leave related to misconduct, performance, or other reasons prompting an investigation (as opposed to general administrative leave unrelated to an investigation).

In the sense of Congress provisions in section 1138(b) of the Administrative Leave Act, Congress expressed the need for legislation to address concerns that usage of administrative leave had sometimes exceeded reasonable amounts and resulted in significant costs to the Government. Congress wanted agencies to (1) use administrative leave sparingly and reasonably, (2) consider alternatives to use of administrative leave when employees are under investigation, and (3) act expeditiously to conclude investigations and either return the employee to duty or take an appropriate personnel action. Congress also wanted agencies to keep accurate records regarding the use of administrative leave for various purposes.

As explained in the ''Executive Summary,'' the Act added three new sections in title 5, U.S. Code, that provide for specific categories of paid leave and requirements that apply to each:

- Section 6329a regarding administrative leave;
- Section 6329b regarding investigative leave and notice leave; and
- Section 6329c regarding weather and safety leave.

The Act directed OPM to prescribe regulations to carry out these three sections and guide agencies regarding these new leave categories. Specifically, under section 6329a, OPM is required to prescribe regulations that provide guidance to agencies regarding (1) acceptable uses of administrative leave and (2) the proper recording of administrative leave and other leave authorized by law. Under section 6329b, OPM is required to prescribe regulations regarding (1) the acceptable uses of investigative leave and notice leave, (2) the proper recording of investigative leave and notice leave, (3) baseline factors that an agency must consider when making a determination that the continued presence of an employee in the workplace may pose a threat to the employee or others, result in the destruction of evidence relevant to an investigation, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, and (4) procedures and criteria for the approval of an extension of a period of investigative leave. And section 6329c required OPM to prescribe regulations regarding (1) the appropriate purposes for providing weather and safety leave and (2) the proper recording of weather and safety leave.

The Administrative Leave Act provided that OPM prescribe these regulations no later than 270 calendar days after its enactment on December 23, 2016—*i.e.,* by September 19, 2017. OPM published proposed regulations on July 13, 2017.[9] OPM proposed to add three new subparts to 5 CFR part 630 that correspond to the three new statutory sections in 5 U.S.C. chapter 63: subpart N, Administrative Leave (implementing section 6329a); subpart O, Investigative Leave and Notice Leave (implementing section 6329b); and subpart P, Weather and Safety Leave (implementing section 6329c).

The Act further directed that agencies ''revise and implement the internal policies of the agency,'' to meet the statutory requirements pertaining to administrative leave, investigative leave, and notice leave no later than 270 calendar days after the date on which OPM issues its regulations.[10] There was no similar agency implementation provision in the law governing weather and safety leave.

The 30-day comment period for the proposed regulations ended on August 14, 2017. After consideration of the comments received, and in recognition of the different implementation dates for the new leave categories under the Act, OPM determined that it would better serve agencies if the regulations at subpart P, Weather and Safety Leave, were issued first, separately from the regulations addressing the other leave categories. The regulations on weather and safety leave were published on April 10, 2018, and became effective on May 10, 2018. In that final rule, OPM stated it would delay enforcement of the reporting requirements for weather and safety leave pending this final rule (see 83 FR 15291); accordingly, agencies must begin reporting weather and safety leave not later than 270 days after the date of publication.

The effective date for these regulations addressing administrative leave (subpart N) and investigative and notice leave (subpart O) is 30 days after the date of publication and the compliance date is set as 270 days after the date of publication. This compliance date is consistent with the provisions in sections 6329a(c)(2) and 6329b(h)(2), which require that agencies revise and implement their internal policies consistent with the Act within 270 calendar days from the date OPM prescribes the regulations. That same effective and compliance dates apply to OPM's amendments to §§ 752.404(b)(3) and 752.604(b)(2), which are conforming amendments related to subpart O. Agencies are responsible for compliance with time limits provided for in the Act, these OPM regulations, and any related guidance.

III. Regulatory Amendments and Related Comments

A. Summary of Regulatory Changes

In this final rule, OPM is adding two new subparts to 5 CFR part 630 that correspond to new statutory sections in 5 U.S.C. chapter 63: subpart N, Administrative Leave (implementing 5 U.S.C. 6329a), and subpart O, Investigative Leave and Notice Leave (implementing 5 U.S.C. 6329b).

Administrative leave is permitted—at an agency's discretion but subject to statutory and regulatory requirements—when an agency determines that no other paid leave is available under other law. Under section 6329a(b)(1), an agency ''may place'' an employee on administrative leave for no more than 10 total workdays in any given calendar year.

Investigative leave and notice leave are permitted—at an agency's discretion but subject to statutory and regulatory requirements—when an agency determines that an employee must be removed from the workplace while under investigation or during a notice period (*i.e.,* the period beginning on the date the employee is provided a notice of proposed adverse action and ending on either (1) the effective date of the

[8] *See* House Report 114–520, (Aug. 25, 2016), accompanying H.R. 4359, at *https://www.govinfo.gov/content/pkg/CRPT-114hrpt520/html/CRPT-114hrpt520.htm;* Senate Report 114–292, (July 6, 2016), accompanying S. 2450, at *https://www.govinfo.gov/content/pkg/CRPT-114srpt292/html/CRPT-114srpt292.htm.*

[9] *See* 82 FR 32263.

[10] *See* 5 U.S.C. 6329a(c)(2), 6329b(h)(2).

adverse action or (2) the date the agency notifies the employee that no adverse action will be taken). These two types of leave may be used only when an authorized agency official determines, through evaluation of baseline factors, that the continued presence of the employee in the workplace may pose a threat to the employee or others, result in the destruction of evidence relevant to an investigation, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests. Before using these two types of leave, agencies must consider options to avoid or minimize the use of paid leave, such as changing the employee's duties or work location. Use of investigative leave is subject to time limitations and special approvals for extensions.

Both the law and these regulations also address recordkeeping and reporting requirements with which agencies must comply. Agencies must keep separate records on each type of leave provided under the Act: administrative leave,[11] investigative leave, notice leave, and weather and safety leave.

OPM is also making several editorial changes from its proposed regulatory text. In § 630.1504(g), OPM has changed the reference to the Committee on Oversight and Government Reform to the Committee on Oversight and Accountability to reflect the change in the name of the relevant committee in the House of Representatives since the passage of the Act. OPM is also revising its proposed regulatory text to adopt gender neutral language. Finally, OPM is revising the Authority citations for part 752 to comply with 1 CFR part 21, subpart B, without substantive change.

B. Digest of Public Comments

OPM received 78 comments on the proposed regulations from agency representatives (18), unions (7), other organizations (6), and individuals (47).[12] In the next section, we address general or overarching comments on the proposed rule. In the sections that follow, we address comments related to specific proposals.

C. General Comments

Comment re Coding in Payroll System: Multiple commenters requested guidance about how the new types of leave should be coded in the payroll system to accurately account for and track the use of these new leave provisions. An agency questioned the need for a separate category for administrative leave used for investigative purposes and suggested coding such leave as investigative leave.

OPM response: The regulations specify that an agency must track the use of the new categories of leave using five categories: (1) administrative leave for investigative purposes (related to employee conduct, performance, or other reasons prompting an investigation), (2) administrative leave for other purposes, (3) investigative leave, (4) notice leave, and (5) weather and safety leave (published separately at 83 FR 15291).

The two categories related to investigations are necessary because the law bars use of investigative leave under section 6329b until the employee has reached the 10-workday annual limit for administrative leave for investigative purposes under section 6329a.[13] That means that agencies will use an initial period of administrative leave for investigative purposes unless and until that period is exhausted before the provisions of section 6329b apply. This is the reason the type of administrative leave must be separately tracked. The regulations do not address details regarding the coding of leave in agency payroll systems or in OPM's Government payroll databases. OPM will be providing payroll and shared service providers with instructions on how to properly code the various types of leave.

Comment re Leave Reporting: An organization expressed concern that the proposed regulations require agencies only to report on their use of administrative leave and not investigative leave or notice leave. The same organization also expressed concern that having reports prepared by the GAO submitted every 5 years is too infrequent. Instead, the organization stated that agencies should be required to maintain real-time, current tallies of all types of paid leave available on its public website, rather than ''buried in obscure, long, after-the-fact reports.''

OPM response: The commenter is incorrect that the regulations do not require reporting on the use of investigative leave and notice leave. The regulations at § 630.1506(c) require that data on usage of investigative leave and notice leave be included in data reports to OPM. Payroll providers submit payroll data to OPM every biweekly pay period. Thus, agencies and OPM will have greater visibility into administrative, investigative, and notice leave usage, which may be used to generate reports as necessary. The 5-year period for GAO's report is a statutory requirement, which OPM has no authority to change, nor does OPM have the authority to impose on GAO the obligation to submit additional reports to Congress.[14]

Comments re Existing Collective Bargaining Agreements: A union requested clarification that any OPM-issued ''guidance'' does not interfere with the union's bargaining rights or legal obligations in existing collective bargaining agreements. Also, an individual commented that excused absence provided under a negotiated collective bargaining agreement should be excluded from the limits in subpart N.

OPM Response: Statutory and regulatory requirements affect collective bargaining agreements in different ways. To the extent that existing agency collective bargaining agreements contain provisions that are inconsistent with the statutory provisions of the Administrative Leave Act (including sections 6329a, 6329b, or 6329c), the Act supersedes conflicting provisions in agency collective bargaining agreements as a matter of law. Regulations issued pursuant to the Administrative Leave Act, however, cannot nullify the terms of an existing collective bargaining agreement for the duration of the agreement. If an agency collective bargaining agreement is in effect before the date these regulations are prescribed,[15] then any provisions in the regulations (other than those restating statutory requirements which are immediately enforceable) that conflict with the agreement may be enforced only when the current term of the collective bargaining agreement expires (whether or not the agreement is

[11] As described below, this final rule provides for two subcategories of administrative leave: (1) administrative leave for investigative purposes (related to employee conduct or performance) and (2) administrative leave for all other purposes.

[12] OPM received an additional 13 comments that contained personally identifiable information and were removed from *regulations.gov* but OPM still considered them in conjunction with this final rule. Four of the total comments received were neither posted to the docket on *regulations.gov* nor considered in this final rule because they are irrelevant to issues discussed in the proposed rule.

[13] *See infra* Section IV.(B.) regarding OPM's interpretation that the annual 10 workday limitation in section 6329a of the Administrative Leave Act was meant to apply to management-initiated actions to ''place'' an employee on administrative leave, with or without the employee's consent, for the purpose of investigating an employee's conduct or performance that could lead to an adverse personnel action.

[14] *See* section 1138(d)(2) of Public Law 114–328 (5 U.S.C. 6329a (Editorial Notes)).

[15] *See* 5 U.S.C. 7116(a)(7) (explaining it shall be an unfair labor practice for an agency to ''enforce a rule or regulation . . . which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed[.]'').

officially reopened for negotiations or is automatically renewed through a rollover provision). But agency collective bargaining agreements that take effect on or after the date these regulations are prescribed must comport with the requirements of this regulation. Any conflicting provisions will be unlawful and may not be enforced. To the extent that provisions in agency collective bargaining agreements are consistent with the Act and accompanying regulations, those provisions remain in effect unless and until the provisions are renegotiated.

Moreover, OPM will issue interpretative guidance relating to these regulations. Any collective bargaining provision reached after the date these regulations are prescribed that conflicts with the regulations would be unlawful and non-negotiable, and, if included in a collective bargaining agreement, unenforceable by the Federal Labor Relations Authority (FLRA or the Authority) or an arbitrator.

Comment re Disciplining Managers: An organization expressed concern that the proposed regulations would not prevent abuse in the form of excessive investigative leave and notice leave, since managers would not be held accountable in a meaningful way for inappropriate use of these types of leave—they do not subject managers who approve excessive leave to discipline and there is no ''down side'' for them in terms of adverse career consequences. The organization stated that such excessive leave affects both the taxpayer and the agency by allowing human resources to be wasted. The organization also expressed concern that excessive investigative leave damages the targeted employee's professional prospects and reputation. For instance, employees can be left in lengthy ''leave-limbos'' without due process protection where they are viewed by management as ''inconvenient, an irritant, or a political threat.''

OPM response: The statute governing investigative leave (section 6329b) established various accountability mechanisms to prevent use of investigative leave beyond specified limits and controls. Those mechanisms include standards on appropriate usage (supplemented by regulations), time limits, approval levels, reports to Congress, recordkeeping, and GAO reviews. OPM notes that, as required by law, these regulations deal with the granting of leave and do not regulate agency decisions regarding investigations or adverse actions.

Although the Administrative Leave Act did not establish time limits for notice leave, notice leave may be used only when an agency has issued a notice of proposed adverse action. Also, agencies must keep records regarding the use of notice leave and those records are subject to review by Congress, OPM, GAO, and other oversight or adjudicative bodies. Data on the use of notice leave can reveal any excessive use that warrants additional scrutiny.

Finally, the regulations are not intended to be a substitute for agencies' own compliance and remedial efforts relating to potential program abuse. But OPM notes that due process protections would not apply to an employee in a paid status because there would be no deprivation of property while on investigative leave or notice leave.

Comment re OPM's Oversight of Agency Practices: An organization commented that OPM's proposed regulations would not place responsibility on OPM to police agency practices with respect to investigative leave and notice leave but would, instead, allow agencies to police themselves. The organization stated that the regulations make no provision for ensuring that agencies establish necessary agency rules or that agency rules are consistent with OPM regulations. The organization suggested that OPM exercise oversight over agency practices.

OPM response: As described above, the Administrative Leave Act authorized OPM to issue regulations dealing with the appropriate uses and proper recording of the new types of leave. Although OPM has a general oversight function, Congress imposed no specific obligation on OPM to monitor or police agency practices with respect to the Act. OPM will take steps, however, to enforce the rules to the extent permitted by resources and consistent with other significant priorities. OPM can and will intervene, for example, if it becomes aware that an agency is not complying with the law and regulations for which OPM is responsible. At the same time, each agency, along with its Inspectors General, is responsible for evaluating agency personnel programs and the actions of its managers. The Act also gave GAO a specific responsibility to evaluate agencies' implementation of investigative leave and notice leave every 5 years.

Comment re Required Hours While Teleworking: One commenter noted the telework-related provisions in the proposed regulations and expressed concern that Federal employees were not performing required hours of work while teleworking.

OPM response: The Telework Enhancement Act of 2010, which built on earlier enactments, specifies roles, responsibilities, and expectations for all Federal executive agencies regarding telework policies, employee eligibility and participation, program implementation, and reporting. Under that statute, each agency is responsible for monitoring whether employees are performing required hours of work while teleworking. These regulations merely recognize the option of telework under authority of 5 U.S.C. chapter 65 and explain how telework relates to the new types of leave.

D. Comments Related to Specific Regulatory Amendments

OPM discusses the regulatory changes to part 630 before turning to conforming changes to part 752.

Amendment to § 630.206(a)

Comment: Three unions, one professional association, and an individual objected to the removal of the provision at § 630.206(a) that agencies traditionally used to excuse employee absences of less than 1 hour. The union and the professional association said there are valid reasons for employee tardiness for which administrative leave should be granted. The union also mentioned the hardship on employees with children in daycare. The union said that agencies should continue to have their current discretion to grant excused absence in any such circumstances. A second union added that it was unfortunate that OPM believes it necessary to remove this provision without any firm data indicating some type of adverse impact. A third union expressed concern about the second approval level now required and believed that removal of the provision is outside the scope of what Congress intended to address with the legislation. The professional association and an individual objected to the change because of the administrative burden. An agency asked if this removes a supervisor's authority to grant 59 minutes of excused absence. Another agency asked if the removal of the provision meant that the authority was now under the new administrative leave regulations. An individual suggested that the administrative leave regulations allow for use of a 59-minute rule without second-level management approval (*e.g.,* to deal with employees who arrive late).

OPM response: The new OPM regulation is not eliminating the possibility of an agency granting administrative leave in appropriate circumstances when an employee arrives late but is simply clarifying the authority under which the agency is

authorizing such administrative leave. There was never clear authority to grant excused absence for leave less than one hour under annual and sick leave statutes. As we explained in the preamble of the proposed rule, § 630.206(a) was not an authority for creating a type of paid time off, but merely recognized the existence of agency authority to provide brief periods of excused absence under Comptroller General decisions. Now that OPM has authority to regulate the use of administrative leave under section 6329a, it is appropriate for this application of administrative leave to be covered under these new regulations.

Since section 6329a is now the exclusive authority for administrative leave for employees covered by title 5, U.S. Code, any excused absence for tardiness should be documented as administrative leave and included in agency reports so that, among other reasons described in this preamble, Congress has complete information about administrative leave. Agencies have discretion under the section 6329a authority to continue to grant administrative leave for these brief periods, if determined to be appropriate.

The preferred action is to continue allowing employees to adjust their stop time under a flexible work schedule within the flexible time bands established by the agency or to use annual or other appropriate leave. OPM recognizes, however, that there may be occasions when an agency believes administrative leave is appropriate. Subject to the principles and prohibitions in § 630.1403, agencies have considerable discretion in granting such administrative leave.

As described further below, these regulations only require a second level of approval to grant administrative leave if an agency head or authorized delegee has not adopted policies that allow first-line supervisors to grant a specified amount of administrative leave in a specifically defined circumstance.

Regarding the administrative burden concern, agencies must account for all hours within an employee's tour of duty, regardless of whether the employee is at work, on leave or leave without pay, using compensatory time off or credit hours, or is absent for any other reason. A decision not to provide administrative leave for absences under 1 hour simply requires application of normal procedures.

Subpart N—Administrative Leave

Section 630.1401—Purpose and Applicability

Comment: One agency asked if the Administrative Leave Act replaced agency authority under 5 U.S.C. 301–302 or if agencies still retain authority to grant administrative leave on matters not addressed in the regulations. An individual asked whether the Administrative Leave Act eliminated, superseded, or replaced the authority in sections 301–302. The individual noted that the limits imposed by the Act would nullify existing collective bargaining agreement provisions on the granting of administrative leave and that agencies may want to continue to use the sections 301–302 authority to preserve those provisions.

OPM response: The statutory language of the Act does not specifically address agencies' preexisting authority in sections 301–302. Section 301 provides in pertinent part that the ''head of an Executive department . . . may prescribe regulations for the government of his department, [and] the conduct of its employees . . . .'' Section 302 authorizes an agency head to delegate the authority ''to take final action on matters pertaining to the employment, direction, and general administration of personnel under his [or her] agency.'' OPM does not regulate agencies' management authority under sections 301–302 (or other statutes that grant agencies similar management authority to grant particular types of leave), so in this final rule OPM does not opine as to what agencies can or cannot do under sections 301–302.

It is OPM's view, however, that section 6329a is the exclusive administrative leave authority for employees covered by title 5, U.S. Code. Section 6329a of the Act defines ''administrative leave'' as leave without loss of or reduction in (1) pay; (2) leave to which an employee is otherwise entitled under law; or (3) credit time for time or service; and ''*that is not authorized under any other provision of law*.'' [Emphasis supplied]. Investigative leave and notice leave are similarly defined, except that investigative leave may only be approved for an employee who is the subject of an investigation (section 6329b(a)(7)), and notice leave may only be approved for an employee who is in a notice period (section 6329b(a)(8)).

The Administrative Leave Act in section 6329a(c)(1) states that the ''Director . . . shall prescribe regulations to carry out this section; and prescribe regulations that provide guidance to agencies regarding acceptable agency uses of administrative leave and the proper recording of administrative leave and other leave authorized by law.'' Under section 6329b(h)(1) of the Act, the ''Director shall prescribe regulations to carry out this section, including guidance to agencies regarding acceptable purposes for the use of investigative leave and notice leave.'' This subsection also provides that OPM shall regulate ''the proper recording'' of investigative leave and notice leave, ''and other leave authorized by law.'' Section 6329c(d) provides similar language regarding appropriate purposes for, and proper recording of, weather and safety leave.

Thus, the Act gives OPM authority to regulate regarding acceptable purposes for using administrative leave, investigative leave, notice leave, and weather and safety leave, and requires OPM to regulate the ''proper recording'' of those types of leave, as well as other leave authorized by law.

As noted above, the specific issue of the continued vitality of other excused absences under sections 301–302 (*i.e.,* other excused absences not defined as a type of administrative leave under the Act) is beyond the scope of these regulations, and we do not address their use in this final rule.

Agencies should be mindful, though, that any such grants may also be subject to internal and external oversight, including scrutiny by the agency Office of the Inspector General, GAO, and Congress, and agencies may have to justify any extraneous uses.

Comment: The individual also asked whether the Act currently impacts collective bargaining agreements and agency policies or if the impact will occur when agencies implement their policies in 270 days.

OPM response: The provisions of the Administrative Leave Act supersede any conflicting provisions in agency policies or a collective bargaining agreement. Once this regulation is prescribed, any new collective bargaining agreement must be consistent with the regulation. Any conflicting provisions in a pre-existing collective bargaining agreement will prevail over regulatory requirements only until such time as the current term of the collective bargaining agreement expires (whether or not the agreement is officially reopened for negotiations or is automatically renewed through a rollover provision). As provided in the Act, agencies must ''revise and implement the internal policies of the agency'' no later than 270 days after related regulations are prescribed so that those policies

conform with the law and regulations.[16] There is no similar delayed agency implementation provision governing weather and safety leave, and thus the weather and safety leave regulations were implemented 30 days after the April 10, 2018, publication date.

Comment: One individual commented that the statutory authority at section 6329a(d) conflicts with the statutory authority at 38 U.S.C. 7421 and asked how OPM would reconcile the two. The same individual asked how 38 U.S.C. 717 applied to proposed §§ 630.1404(a) and 630.1504(a).

OPM response: Chapter 74 of title 38, U.S. Code, applies to personnel of the Veterans Health Administration (VHA), a component of the Department of Veterans Affairs. The statute at 38 U.S.C. 7421 applies exclusively to VHA physicians, dentists, podiatrists, optometrists, registered nurses, physician assistants, expanded-duty dental auxiliaries, and chiropractors. While these employees are, by default, covered by title 5, U.S. Code, leave provisions (since they are ''employees'' under 5 U.S.C. 2105), the Department of Veterans Affairs (VA) may, generally, use the section 7421 authority to exclude them from title 5, U.S. Code, leave provisions and to create alternative leave rules for them. However, in each of the sections 6329a, 6329b, and 6329c, there are provisions requiring VA to apply those sections ''notwithstanding'' the section 7421 authority.[17] The Administrative Leave Act provisions, therefore, apply to VHA employees notwithstanding the section 7421 authority to prescribe leave benefits.

The statute at 38 U.S.C. 717 was enacted via Public Law 114–315, title V, section 503(a)(1) on December 16, 2016, while the Administrative Leave Act was enacted a few days later on December 23, 2016. Under section 717, the Secretary of the VA may not place any covered individual (*i.e.,* those subject to an investigation or who are facing disciplinary action) on administrative leave, or any other type of paid non-duty status without charge to leave, for more than a total of 14 days during any 365-day period.[18] Section 717 also authorizes the Secretary of VA to waive the 14-day limit if the Secretary notifies Congress of the reasons for an extension. That VA employees are covered under a VA-specific administrative leave limitation does not except them from coverage under the Administrative Leave Act. We note that VA employees are covered under the Administrative Leave Act's definition of ''agency'' under sections 6329a(a)(2)(B), 6329b(a)(1)(B), and 6329c(a)(1)(B). Both laws can be applied simultaneously.

Comment: Nine individuals opposed the application of the administrative leave regulations, and particularly the 10-workday calendar year limit, to VA employees. These individuals cited several activities for which they maintained VA granted excused absences in the past, including research, teaching, training, medical education and certification, attending conferences and scientific meetings, travel to other VA stations or Federal agencies for support or educational purposes, conducting grant reviews or serving on panels at other agencies, reporting on VA research findings and models to stakeholders and professional societies, and sabbaticals. The individuals felt that the regulations would seriously impair VA patient care, education, and research efforts and would negatively affect recruitment and retention.

OPM response: Congress specifically provided in the Administrative Leave Act that section 6329a ''shall apply'' to an employee covered by 38 U.S.C. 7421(b), ''notwithstanding subsection (a) of section 7421.'' Through this enactment, Congress required VA employees covered by leave programs established under section 7421(a) to be subject to section 6329a. While these VA employees are covered by the statute, as explained later in this preamble, the annual 10-workday period only applies to administrative leave for investigative purposes. Also, many of the activities cited by the commenters might more appropriately be classified as ''on-duty'' time, which does not require the granting of administrative leave. For instance, if VA determines that research, teaching, grant reviews or other support activities are components of an employee's duties and are justified under agency appropriations, these activities would not require the granting of administrative leave. Likewise, administrative leave is not needed for training, conferences, and meetings that are authorized under sections 4109 and 4110 and the regulations at § 410.404.

However, administrative leave is generally not appropriate for sabbaticals that would provide paid time off for lengthy periods of time. When Congress has sought to allow certain Federal employees to take sabbaticals, it has provided specific authority via legislation.[19] We note that VA may consider whether it can provide sabbaticals under its section 7421 authority to establish ''conditions of employment.'' VA may also consider whether certain sabbaticals qualify as special work assignments rather than as ''leave'' (as can be done with certain assignments made under 5 U.S.C. 3371–3376).

Comment: One commenter believed that VA activities for which excused absence had been granted in the past would no longer qualify because proposed § 630.1403(a)(3) limits the duration of administrative leave to ''not more than 1 workday.''

OPM response: OPM's final rule does not bar leave longer than 1 workday. While § 630.1403(a)(3) states that administrative leave ''is appropriately used for brief or short periods of time—usually for not more than 1 workday'' it specifies that ''[a]n incidence of administrative leave lasting more than 1 workday may be approved when determined to be appropriate by an agency.''

Section 630.1402—Definitions

Comment: The preamble discussion on the proposed § 630.1402 stated that the 5 days of excused absence for employees returning from active military duty granted by the Presidential memorandum of November 14, 2003, is not considered administrative leave. One commenter asked if this meant that the 5 days would no longer be granted or if the 5 days now belong to a separate leave category.

OPM response: The 5 days of excused absence for employees returning from active military duty is authorized by a Presidential directive. As noted in the

[16] *See* sections 6329a(c)(2) and 6329b(h)(2). In the proposed rule, OPM stated that, for the final rule, OPM intended to specify that the regulations for subparts N and O (dealing with administrative leave and investigative/notice leave, respectively) ''will take effect 270 days after publication by specifying a separate 'implementation date.''' 82 FR 33263, 33264.To be clear, the effective date of this final rule is 30 days after publication and the date by which agencies must revise and implement their internal policies to meet the requirements of the Administrative Leave Act and these regulations is 270 days from the date these regulations are published.

[17] *See* sections 6329a(d), 6329b(i), and 6329c(e).

[18] Notably, the 14-day annual limitation on the number of days the VA may ''place'' an employee on administrative leave or other paid non-duty status in 38 U.S.C. 717, enacted days before the Administrative Leave Act, applies only to VA employees who are subject to an investigation to determine whether they should be subject to any disciplinary action under title 38 or title 5 or against whom any disciplinary action is proposed or initiated under title 38 or title 5. *See* 38 U.S.C. 717(c). This further supports OPM's reading that the 10-day annual period in section 6329a(b)(1), limiting the number of days an agency ''may place'' an employee on administrative leave under the Administrative Leave Act was meant to apply to agency-directed administrative leave for investigative purposes, as explained below.

[19] *See, e.g.,* 5 U.S.C. 3151(a)(7), 3396(c); 50 U.S.C. 3610(a)(1)(G).

definition of *administrative leave* in § 630.1402, administrative leave does not encompass leave authorized by Presidential directives. The President is acting under the President's authority under the Constitution; thus, excused absence provided by Presidential directive is leave that is authorized under another provision of law and is excluded from the statutory definition of *administrative leave* in section 6329a(a)(1). Also, section 6329a limits only actions by agencies, not actions by the President. Thus, the 5 days of excused absence authorized by the Presidential memorandum is not administrative leave under section 6329(a)(1) and, as such, these regulations do not affect this entitlement.

Comment: An agency requested clarification on the proper use of administrative leave authorized by Congress or Presidential directive, which the agency said appears inconsistent with the regulatory provision at § 630.1403(a)(2) that administrative leave be granted sparingly. The agency also requested that OPM expressly address other potential uses of administrative leave to aid agencies that will need to renegotiate labor agreements in light of the statutory 10-workday calendar year limit in section 6329a.

OPM response: The definition of *administrative leave* in § 630.1402 excludes paid leave authorized by statutes other than section 6329a and by Presidential directives issued under the President's authority. Therefore, the treatment of leave authorized by other statutes and Presidential directives is excluded from these subpart N regulations.

Comment: One agency said that in sections of the proposed rule, OPM used the term *administrative leave* to refer to investigative leave, notice leave, and weather and safety leave. The agency recommended that OPM redefine *administrative leave* to exclude these other types of leave.

OPM response: Following review of the proposed rule, OPM did not find any instances where the term was used incorrectly. The definition of *administrative leave* in § 630.1402 clearly provides that it applies only to leave authorized under section 6329a and subpart N.

Comment: Three agencies and an individual asked about other paid leave in relation to the regulations—specifically, court leave, bone marrow and organ donation leave, funeral leave, disabled veteran leave, and the 4 hours of excused absence for preventive health screenings for employees with low sick leave balances under Presidential Memorandum of January 4, 2001. Commenters asked whether these types of leave were subject to the 10-workday annual limit under section 6329a.

OPM response: Leave entitlements authorized under other statutes or Presidential directives are not subject to section 6329a and subpart N, so they are not considered administrative leave. Also, as explained below, the 10-day annual limit in section 6329a applies to administrative leave for investigative purposes, not the types of leaves identified in the comments above.

Comment: An agency recommended adding a definition for ''excused absence.''

OPM response: The Act did not define ''excused absence'' and the regulations refer to ''excused absence'' only in the definition of *Presidential directive,* the meaning of which is self-evident. Therefore, OPM is not adding this definition as we do not consider it to be necessary.

Comment: One agency recommended that the definition of *agency* conform to the definition of *agency* in the annual and sick leave regulations.

OPM response: The term *agency* has differing definitions in five other subparts of 5 CFR part 630. Accordingly, OPM has defined *agency* in § 630.1402 based on the statutory definition at section 6329a(a)(2). The definition of ''agency'' specified in the Act must be applied in these regulations. OPM has also clarified the meaning of the term *agency* in the context of describing an authorized agency official empowered to make a determination and take action.

Section 630.1403—Principles and Prohibitions

Comment: One agency commented that the regulations governing agency use of administrative leave are too restrictive and that, without a statutory basis, they specifically target collective bargaining agreements as well as administrative leave used for the benefit of a labor organization. A union objected to the general principles set out in § 630.1403(a)(1), which the union said OPM based on unspecified past OPM policy and guidance and unnamed Comptroller General decisions.

OPM response: The regulations establish parameters for the granting of administrative leave in accordance with appropriations laws and for differentiating administrative leave from on-duty time and other authorized paid absences. The proposed rule at § 630.1403(a)(1) established three criteria where administrative leave is allowed: (1) the absence is directly related to the agency's mission, (2) the absence is officially sponsored or sanctioned by the agency, or (3) the absence is in the interest of the agency or of the Government as a whole. The proposed regulations reflected basic principles consistent with the sense of Congress section of the Administrative Leave Act, which references precedent by the Comptroller General and OPM guidance.[20] There are numerous Comptroller General decisions on administrative leave and excused absence.[21] OPM policy guidance on administrative leave is provided in reference materials by OPM[22] and historically in the former Federal Personnel Manual. The list of allowable criteria in the proposed § 630.1403(a)(1) largely mirrored OPM's longstanding guidance regarding the appropriate uses of administrative leave. OPM's guidance, however, includes a fourth category that was *excluded* from the proposed rule: ''The absence will clearly enhance the professional development or skills of the employee in the employee's current position.'' OPM has decided to add this criterion to the list of allowable uses of administrative leave in the final rule. Its inclusion allows agencies to act consistent with OPM's longstanding guidance and provides the flexibility with which agencies are familiar. OPM will be updating its guidance materials on administrative leave to reflect these regulations.

Comment: Two agencies, three unions, and a professional association commented on the provision at § 630.1403(a)(4) that prohibits agencies from establishing administrative leave as an ongoing or recurring entitlement. One agency said that the provision appeared to be aimed at banning all collective bargaining agreement language that provides for the granting of administrative leave in specified circumstances. Another agency asked if the provision prohibited agency policy from addressing administrative leave for blood donations and voting. Two unions objected on the basis that an employee who qualifies for the administrative leave should receive it regardless of whether the provision of the leave is recurring. One union said that this provision was not needed because birthdays and the day after a Thursday holiday could be listed as a specific prohibited use under paragraph (b) of the section. The union also felt that

[20] *See* section 1138(b)(1) of the Act.

[21] *See e.g.,* Comptroller General decision B 156287, February 5, 1975, at *http://www.gao.gov/products/452029#mt=e-report.* Comptroller General decisions may be found at *http://www.gao.gov/search?advanced=1.*

[22] *See infra* note 5.

requiring leave to be granted on an ad hoc basis would lead to uneven application. The professional association noted that, in its experience, administrative leave for recurring events, like birthdays and in conjunction with holidays, has not been granted to employees with any frequency. In addition, it said that § 630.1403(a)(4) as it pertains to administrative leave in conjunction with holidays is erroneous, in that these are generally granted under the administrative dismissal authority at 5 CFR part 610, subpart C. The association also believed that this section was contrary to the authority of the President to close the Federal government by executive order.

OPM response: The proposed regulations at § 630.1403(a)(4) were not intended to bar recurring use of administrative leave; the intent was to bar establishing a recurring use as an *entitlement.* The plain language of the Act makes clear that the approval of administrative leave is at the agency's discretion, and that such leave is not an entitlement of the employee.[23] OPM's intent was to ensure that agencies retain control of administrative leave and are always able to grant or deny use of such leave based on mission needs. Otherwise, the authority could be used in a manner never contemplated by Congress—to create new open-ended entitlements to ''holidays'' or new types of paid leave entitlements with no agency discretion—an area over which Congress has traditionally asserted control.[24]

OPM appreciates these comments and clarifies that this provision does not prohibit agencies from providing administrative leave on an ad hoc basis or limited basis for a recurring activity that otherwise meets one of the acceptable use criteria. For example, agencies may establish in policy, approved by the agency head, that authorized agency officials may make ad hoc determinations to grant administrative leave for a specified activity (*e.g.,* blood donations or voting). Such a policy might provide that a first-level supervisor can grant, on an ad hoc basis, up to 4 hours of administrative leave to an employee to donate blood in an agency-sponsored drive after determining that such leave is appropriate.

OPM has revised the regulatory language to ensure that it conveys the intended purpose—namely, that (1) administrative leave is not an entitlement, and an agency retains the discretion to grant or not grant administrative leave in any circumstance based on agency judgments regarding mission needs, (2) generally, administrative leave should be granted on an ad hoc, event-specific, or time-limited basis, and (3) there is no categorical prohibition on administrative leave being granted for a recurring event, but rather that it cannot be a recurring entitlement that eliminates agency discretion.

The regulatory language in § 630.1403(a)(4), moreover, does not include separate requirements for recurring events like employee birthdays or holidays. In the preamble to the proposed regulations, OPM stated that agencies should not provide administrative leave for employees' birthdays or the day following a Thursday holiday as a recurring entitlement (that is, with no agency discretion to consider mission needs). As explained above, OPM is clarifying in these regulations that agencies may not use administrative leave to establish recurring entitlements that eliminate agency discretion over granting the leave.

A commenter expressed the view that § 630.1403(a)(4) was contrary to the authority of the President to close the Federal Government by executive order. The President may establish a special holiday under 5 U.S.C. 6103(b). Such a holiday is not a use of administrative leave and is not governed by section 6329a or these regulations.[25]

A commenter also misunderstands the application 5 CFR part 610, subpart C, which applies only to a very small segment of Federal employees paid at daily, hourly, or piecework rates who could not otherwise receive paid time off received by most employees (*e.g.,* on a holiday). It cannot be used as an authority to grant administrative dismissals to other employees.[26]

Comment: Two agencies and a union asked for OPM to clarify whether administrative leave is used for union official time. One agency felt that the regulations specifically targeted administrative leave used for the benefit of a labor organization.

OPM response: Union official time granted pursuant to 5 U.S.C. 7131 is a specific type of work time during which the employee otherwise would be performing the duties of the employee's assigned position, for which grants of administrative leave would not be necessary or appropriate. By definition, *administrative leave* does not include activities that qualify as hours of work (§ 630.1402). Under section 7131, official time is treated as work time for which employees receive basic pay. Section 7131(a) and (c) authorize official time for specific representational purposes. Section 7131(b) prohibits official time for internal union business. And section 7131(d) provides authority for an agency and exclusive representative to negotiate official time for any other matter covered by 5 U.S.C. chapter 71 and which they agree to be reasonable, necessary, and in the public interest. Finally, payroll systems already have separate payroll codes for the various categories of official time, which are not impacted by these regulations. Therefore, agencies have sufficient authority to provide official time for use by representatives of a labor organization.

Finally, these regulations do not target any particular use or use by any group. Rather, they are designed to comply with statutory requirements and to implement Congress' intent as to what comprises the acceptable uses of administrative leave.

Comment: One agency and two individuals were concerned with the impact of the regulations on settlement agreements. The agency noted that it made extended administrative leave substitutions on timekeeping records pursuant to orders, settlements, and agency decisions. One individual stated that excused absence under a third-party settlement agreement should be excluded from the limits under subpart N.

OPM response: As a general principle, settlements must comport with applicable law and regulation. They may not include provisions that provide aspects of relief that the agency is not free to grant under applicable law. If an agency determines, on a prospective basis, that it is appropriate to use administrative leave under section 6329a as part of a settlement agreement, such use will be subject to its statutory conditions and regulatory requirements. If other statutory authorities are relied on to grant paid nonduty status on a prospective basis as part of a settlement agreement, then the paid nonduty status is not considered to be administrative leave under section 6329a.

A retroactive period of paid nonduty status may be provided under the Back Pay Act (section 5596) or under a settlement under that law. Such a period of paid nonduty status does not

[23] *See* section 6329a(b)(1), stating that an agency ''may'' approve administrative leave.

[24] Congress has the authority to establish recurring entitlements to paid time off in law (*e.g.,* paid holidays under chapter 61 or various types of paid leave under chapter 63), and, thus, the creation of new recurring paid time off entitlements should be reserved to Congress.

[25] *See* the definition of administrative leave under § 630.1402.

[26] *See also* section 6104.

constitute administrative leave under section 6329a since it is not ''leave'' and is authorized by operation of another law. Retroactive salary payments to cover a period of erroneous separation are a correction of an erroneous personnel action that is authorized under the back pay law. These payments would be included under the definition of ''pay, allowances, and differentials'' in § 550.803 (pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation). They are payments for nonwork periods authorized by the back pay law, not a use of discretionary administrative leave, and should not be designated as administrative leave in timekeeping records.

Comment: One individual commenter argued that agencies should not grant administrative leave prior to a holiday.

OPM response: Administrative leave is an agency discretionary authority; therefore, each agency makes determinations regarding when and for what purposes (including as a goodwill gesture to address employee morale) it provides administrative leave. The regulations at § 630.1403 set out certain principles and prohibitions on use of administrative leave but do not otherwise restrict agencies from exercising their discretionary authority in granting this leave. OPM is adding a new paragraph (6) in § 630.1403(a) that lists factors agencies are required to consider as they develop policies and make case-specific decisions regarding the use of administrative leave. Consideration of these factors, in combination with guiding principles, will help agencies exercise their discretion with respect to administrative leave in a prudent manner.

Comment: Two unions opposed the provision at proposed § 630.1403(a)(3) that states administrative leave is appropriately used for brief or short periods of time. One of the unions stated that the duration should be at the agency's discretion or as provided under negotiated policies. Both unions recommended that OPM remove the provision so as not to mislead agencies on Congressional intent.

OPM response: The ''Sense of Congress'' provisions at section 1138(b)(2) of the Administrative Leave Act explicitly state that ''administrative leave should be used sparingly.'' At section 1138(b)(1)(A), Congress recognized the ''established precedent of the Comptroller General'' and ''guidance provided by the Office of Personnel Management'' as having provided appropriate and reasonable standards for Governmentwide administrative leave policy. Numerous Comptroller General decisions have held that administrative leave should be granted only for brief periods of time. This has been OPM's longstanding policy as reflected in its historical guidance and its public fact sheet on administrative leave. OPM notes that while § 630.1403(a)(3) states that administrative leave is appropriately used for brief periods of time, it also permits agencies the ability to approve longer periods when appropriate, at their discretion. This caveat is described further, below, with regard to agency-specific policies established by the head of an agency.

Comment: An individual recommended that employees be permitted to use administrative leave for voluntary community service.

OPM response: OPM does not believe that the proposed § 630.1403(b)(4) would have barred administrative leave for voluntary community service. It provided that such administrative leave was permitted if it was officially sponsored or sanctioned by the head of the agency based on the agency's mission or Governmentwide interests, which ties these provisions with the general principles in § 630.1401(a)(1). As explained previously, however, OPM will include a fourth category to the general principles in § 630.1403(a)(1) that was excluded from the proposed rule: the absence will clearly enhance the professional development or skills of the employee in the employee's current position. The inclusion is consistent with OPM's longstanding guidance. OPM also is not adopting the proposed prohibition in § 630.1403(b)(4), since it is unnecessary; the requirements to satisfy one or more of the general principles in § 630.1401(a)(1) and to operate under approved agency policies is sufficient to prevent inappropriate use of administrative leave in community service situations.

Comment: Another individual commented that the regulations should discuss scenarios where administrative leave is not needed because employees are considered to be on duty time. A second commenter recommended that OPM add guidance that sets parameters on the granting of administrative leave for holiday parties, employee recognition days, and similar infrequent social events. A union commented that OPM should note that on-duty activities such as award ceremonies and training can be voluntary in nature.

OPM response: Certain activities occurring during an employee's work hours are generally considered on-duty events for which administrative leave does not apply. These include agency-sponsored events (*e.g.,* award ceremonies), employee human resources matters, management-approved team-building activities (*e.g.,* holiday social gatherings), and training, conferences, and meetings that are authorized under sections 4109 and 4110 and the regulations at § 410.404. At the agency's discretion, attendance at these on-duty activities can be voluntary. Other activities, although they occur during employee work hours, are generally not considered on-duty activities. For example, activities related to employee wellness and health generally are not considered as duty time; however, longstanding policy reflected in Comptroller General decisions is that the agency interest in employee health justifies use of brief periods of administrative leave for these activities. Agencies will retain discretion in determining whether certain activities are on-duty events for purposes of implementing the Administrative Leave Act and this final rule.

Comment: A union believed that dual status employees should receive administrative leave for required military medical examinations and the diagnosis and treatment of medical conditions caused or aggravated by military service.

OPM response: If the employing agency determines that this is an appropriate use under the general principles at § 630.1403(a), it has the discretion to grant administrative leave.

Comment: One agency stated that the administrative leave definition should exclude leave for Federal employees stationed overseas when they observe foreign holidays. The same agency asked whether administrative leave may still be provided for rest and recuperation (R&R).

OPM response: OPM has no authority under laws it administers to authorize paid time off for local holidays in foreign areas beyond the holidays provided under section 6103. An agency may, however, use the administrative leave authority in section 6329a if it determines the circumstances comply with the OPM regulations. For example, under § 630.1403(a)(4) in this final rule, an agency must retain the discretion to grant or not grant administrative leave in any particular circumstance based on agency judgments regarding mission needs. An agency cannot, therefore, create a paid holiday in a foreign area as an absolute entitlement. We expect that agencies with employees in foreign areas will determine whether to grant administrative leave in connection with a foreign holiday to some or all employees on a case-by-case basis. If

there is a safety-related basis for the time off, use of weather and safety leave may be appropriate. Agencies may also continue to provide administrative leave for R&R if the employing agency determines that this is an appropriate use under the general principles at § 630.1403(a).

Comment: Three agencies and a union sought clarification on physical fitness activities during duty hours. One of the agencies and the union recommended that physical fitness be classified as an on-duty activity and not require the granting of administrative leave. One agency asked if long-term physical fitness activities would be prohibited as a recurring activity under § 630.1403(a)(4). Two of the agencies were concerned that the limitation on administrative leave would have a negative effect on wellness programs, with one agency stating that the limitation would significantly affect participation in agency-sanctioned and administered physical fitness activities. The same agency also requested that OPM clarify the application of this rulemaking on employees who have physical fitness requirements in connection to their position; *i.e.,* military technicians of the Reserves and National Guard who must maintain military membership as a condition of employment of their civilian position. The union recommended that these dual status employees be authorized to engage in voluntary physical training as official hours of work.

OPM response: Agencies, at their discretion, may permit employees with job-related fitness requirements (such as law enforcement officers) to participate in physical fitness programs while on duty. For other employees, physical fitness activities should normally be performed outside of duty hours unless an employee is using annual leave. When covered by a flexible work schedule, an employee may be able to shift work hours to create mid-tour breaks during which physical fitness activities may be performed. If an agency determines it is appropriate to provide administrative leave for brief periods of physical fitness activities for a limited time, it may grant such administrative leave on an ad hoc basis.

The Comptroller General has found that ''official duty time'' for physical fitness activities is appropriate only for employees covered by a mandatory physical fitness program due to the strenuous nature of the position.[27] That decision indicated that administrative leave was inappropriate for other employees in the absence of supporting guidance from OPM. OPM later issued guidance to recognize that short periods of excused absence (by definition, not ''duty'' time) could be provided to employees in positions without mandatory physical fitness requirements.[28] All administrative leave granted under section 6329a, including that which is granted for fitness programs, would have to be recorded and reported, as described below.

Comment: An agency asked if the regulations will impact the 24 hours an agency grants for a Permanent Change of Station (PCS). The agency also asked if the 10-workday limit impacts administrative leave granted to new hires as a relocation incentive.

OPM response: Employees on approved house-hunting trips under chapter 302, subpart C, of the Federal Travel Regulations are in duty status and do not require administrative leave.[29] Also, as explained below, the 10-workday limit in section 6329a does not apply to this type of leave.

Comment: One union requested that OPM eliminate the requirement in proposed § 630.1403(a)(5)(i) that administrative leave be permitted under policies established by the head of the agency and instead require only that administrative leave be permitted under ''written agency policies.'' The union said that the definition of *head of the agency* is unclear and overly restrictive, noting its application to Department of Defense subordinate departments.

OPM response: OPM does not consider the definition of *head of the agency* in § 630.1402 to be unclear. *Agency* is defined in that section as meaning an Executive agency as defined at 5 U.S.C. 105. Under the statute, *Executive agency* means an ''Executive department, a Government corporation, and an independent establishment.'' The Executive departments are set out at 5 U.S.C. 101 and include the DoD. Therefore, under the regulations, administrative leave policies for subordinate departments under the DoD, or any other agency, must remain within the discretion of the agency and must be established (or approved) by the head of the agency to help prevent abuse and to address Congressional concerns about inappropriate use of administrative leave. Agency heads are directly accountable for agency administrative leave policies. This regulation does not mandate how specific the agency top-level policy is and does not preclude subordinate organizations from making more specific policies under a delegation of authority. Those agency head policies may include general principles as well as specific rules. An agency head may delegate authority to lower-level officials to establish more specific policies if they are consistent with the agency head's overarching policies. To assist agencies in developing appropriate policies on use of administrative leave, OPM is adding a new paragraph (6) in § 630.1403(a) that lists factors agencies are required to consider.

Comment: Five agencies, a union, and an individual expressed concerns with proposed § 630.1403(a)(5)(ii), which provides that a determination to grant administrative leave for an absence must be reviewed and approved by an agency official higher than the official making the determination (unless there is no higher-level official). The agencies felt that this requirement diminished the authority of first-level supervisors, who they believed should be able to grant administrative leave for specific situations, such as blood donations or for occasions where less than an hour is needed. Two agencies and the union said a second level of review should not be needed where administrative leave is provided under agency policy. One agency believed the second level of review to be an administrative burden and recommended that heads of agencies have the authority to delegate further, such as to the heads of installations. Another agency said that the requirement would be time consuming for second-level officials, particularly for routine events. The union expressed concern that the second level of approval would cause administrative delays to the detriment of the employee, especially when the second-level official is not in the same building or there is a time zone difference. The union also said it was unaware of any evidence showing administrative leave abuse not related to investigations and concluded that the requirement for second-level review was unnecessary and inefficient. The individual suggested allowing agencies to determine the appropriate procedures and level of review.

OPM response: As explained above, agencies may establish policies, approved by the head of the agency (or the agency head's delegee), that provide specific circumstances (blood drives, voting, etc.) in which supervisors may grant a stated amount of administrative leave to employees without the need for

[27] *See e.g.,* Comptroller General decision B–218840, Sept. 6, 1985, 64 Comp. Gen. 835 at *http://www.gao.gov/products/438969#mt=e-report.*

[28] *See e.g.,* subchapter 11 of FPM Chapter 630, Sept. 23, 1991, and FPM Letters 792–15, April 14, 1986, and 792–23, June 25, 1992.

[29] *See* 41 CFR 302–5.17 and Comptroller General decision B–203196, Feb. 3, 1982.

second-level review. OPM is revising the regulations to make clear that second-level approval is not necessary when a specific type of use and amount of administrative leave is permitted under agency head policies or supplemental policies issued by agency officials with specific delegated authority. At the same time, to support prudent use of administrative leave, OPM is adding a new paragraph (6) in § 630.1403(a) that lists factors agencies must consider in developing policies on use of administrative leave.

Comment: An agency asked what the intent is for the prohibition on administrative leave use for personal benefits in proposed § 630.1403(b)(2) and whether it precluded agencies from providing administrative leave for other purposes.

OPM response: The proposed § 630.1403(b)(2) would have barred administrative leave to participate in an event for the employee's personal benefit or the benefit of an outside organization; however, there was an exception to the bar based on a determination that the employee's participation would satisfy one or more of the general principles in § 630.1401(a)(1). As explained above, however, OPM is adding a fourth category to § 630.1403(a)(1) that is excluded from the proposed rule: the absence will clearly enhance the professional development or skills of the employee in the employee's current position. We are therefore not adopting the proposed prohibition in § 630.1403(b)(2), since it is unnecessary and arguably inconsistent with the additional acceptable use in § 630.1403(a)(1). The requirement to satisfy one or more of the general principles in § 630.1401(a)(1) and to operate under approved agency policies is sufficient to prevent inappropriate use of administrative leave in situations that provide a personal benefit to an employee or benefit an outside organization.

Comment: One agency objected to the prohibition in proposed § 630.1403(b)(3) against granting administrative leave to recognize the performance or contributions of employees. The agency felt that this provision limited an agency's ability to recognize its high performers in a cost-effective manner.

OPM response: The provision at proposed § 630.1403(b)(3) prohibits an agency from granting administrative leave as a reward to employees but does not limit the agency's ability to grant time off as a reward under other legal authority. As OPM noted in the preamble of the proposed rule, the proper personnel authorities for recognizing the performance or contributions of employees are cash awards and time-off awards (*e.g.,* under section 4502(e) and 5 CFR 451.104).

Comment: Another agency commented that the regulations will necessitate a change in the timekeeping for 10-month faculty at an academy as their two non-working months were recorded as administrative leave.

OPM response: OPM agrees; these employees are in an off-duty paid status, not on administrative leave. The agency will need to work with its payroll provider for the appropriate coding under the timekeeping system.

Section 630.1404—Calendar Year Limitation

Comment: A union asked for clarification on whether the calendar year for purposes of applying the 10-workday limit for placement on administrative leave is January 1 to December 31 or is 12 consecutive months from any day during the year. Two agencies recommended that, for consistency, administrative leave be tracked by the year used for other leave purposes. An individual said that all other leave (except military leave) is based on the leave year and that using a calendar year for administrative leave would be difficult. The individual recommended using the leave year or payroll calendar year. The same individual asked if a period of administrative leave that continues into another year counts toward the 10-workday limit for the new year. Another individual asked that OPM consider using a rolling year instead of a calendar year. Another commenter suggested that OPM's proposed rule, applying the 10-workday limitation to all administrative leave was incorrect and that it should only apply to administrative leave for investigative purposes.

OPM response: First, OPM agrees that the 10-workday limitation in section 6329a of the Administrative Leave Act does not apply to general uses of administrative leave, but instead was meant to apply to management-initiated actions to ''place'' an employee on administrative leave, with or without the employee's consent, for the purpose of investigating an employee's conduct, performance, or other reasons prompting an investigation that could lead to an adverse personnel outcome. OPM is therefore modifying this aspect of its proposed rule.

Section 6329a states that: ''During any calendar year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days.'' [30] The language—''an agency may place''—suggests that the action to put the employee in administrative leave status is initiated and controlled by management, with or without the employee's consent. Indeed, this is the same language that Congress used to describe an employee being in investigative leave or notice leave.[31] It is plainly not the language that Congress used throughout 5 U.S.C. chapter 63 to describe other types of leave. Instead, chapter 63 uses the more obvious ''grant,'' and it does so with respect to multiple types of leave.[32] Also, there is a direct connection to the 10-workday annual limit in the law governing investigative leave in section 6329b. Section 6329b(b)(3)(A) bars use of investigative leave until the ''expiration of the 10 workday period described in section 6329a(b)(1).'' This connection supports the conclusion that the 10-workday annual limit was intended to cover the same investigations as those described in section 6329b, not more general uses of administrative leave.

Moreover, interpreting the 10-workday annual limit as applicable to more general uses of administrative leave could lead to illogical results. Take, for example, an employee who in January is placed on 10 days of administrative leave for investigatory purposes. After those 10 days, the agency determines that there is no need to place the employee on investigative leave and the employee returns to her normal work status. If the 10-day annual limitation applies to general uses of administrative leave, then, for the remainder of the year, the employee would never be able to use administrative leave—not for voting, or a blood drive, or a COVID vaccine, or any other plainly acceptable and appropriate use—because the employee had already been placed on administrative leave for investigatory purposes. OPM does not believe that Congress intended such a nonsensical result.

This understanding of the 10-workday limitation on administrative leave—that

[30] Section 6329a(b)(1) (emphasis added).

[31] Section 6329b(b)(1) (''An agency may . . . place an employee in investigative leave if the employee is the subject of an investigation; [or] notice leave if the employee is in a notice period.); Section 6329b(b)(2) (''An agency may place an employee in [investigative leave or notice leave] only if the agency has [identifying conditions]'').

[32] *See, e.g.,* section 6302(d) (''The annual leave . . . may be granted at any time during the year''); section 6305 (''After 24 months of continuous service . . . an employee may be granted 24 months [of home leave]); section 6310 (''The head of the agency concerned may grant leave of absence . . . to alien employees''); section 6323 (''[Military leave] granted . . . shall not exceed 22 work days.'').

it only applies to agency-directed placement on administrative leave for investigative purposes—not only is firmly grounded in the statutory text and structure but is also consistent with and supported by the legislative history. The House and Senate Reports indicate that the Administrative Leave Act was primarily created in response to concerns about abuse related to disciplinary proceedings. Both Reports heavily cite the 2014 GAO report specifically focused on these types of abuses. The main impetus for the Act was to address (1) inconsistent use of administrative leave among agencies and excessive use of administrative leave while conducting misconduct and disciplinary proceedings and (2) inconsistent recordkeeping which made oversight of administrative leave difficult.

The legislative history evolved over time but remained focused on administrative leave relating to employee performance, conduct, and other reasons that would prompt an investigation.

The House Report stated that H.R. 4359 ''creates a standard process for the use of administrative leave in cases of misconduct and poor performance, which will help curb the overuse of administrative leave within the federal government.'' It explained that, under the bill, Federal employees could not be placed on administrative leave for more than 14 days during any year for misconduct or poor performance. The House bill's ''rules of construction'' emphasized this point, saying ''nothing in the amendment shall be construed to . . . limit the number of days that an employee may be placed on administrative leave, or any other paid non-duty status without charge to leave, for reasons unrelated to misconduct or performance.''

The Senate Report on S. 2450 cited OPM administrative leave guidance, including the four acceptable factors for granting administrative leave, but did so as background and was not critical of this guidance or the factors. The Senate bill's time cap focused on limiting an agency from placing an employee on administrative leave for a period of more than 5 *consecutive* days and addressed sections 301–302, but only to say that the authority could not be used to get around this consecutive-day limitation. It also stated that agencies should not circumvent the consecutive-day cap by putting an employee on leave, taking them off, and putting them back on again. Ultimately, the language regarding the 5-day consecutive period and the reference to sections 301–302 did not make it into the final statutory language of the Administrative Leave Act. But the Senate bill's 5-day (consecutive) cap was focused on investigation-related administrative leave.

The structure of the statutory language in section 6329a—''During any calendar year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days''—resembles the language in the Senate bill: ''An agency may place an employee in administrative leave for a period of not more than 5 consecutive days.'' As explained further, below, section 6329b(b)(3) references this 10-day period, stating ''Upon the expiration of the 10 work day period described in section 6329a(b)(1) with respect to an employee, and if an agency determines that an extended investigation of the employee is necessary, the agency may place the employee in investigative leave for a period of not more than 30 work days.'' The Senate bill, S. 2450, regarding ''investigative leave and notice leave'' proposed a similar clause relating to investigative leave titled ''Duration of leave,'' which states that, ''Subject to extensions of a period of investigative leave for which an employee may be eligible . . ., the initial placement of an employee in investigative leave shall be for a period not longer than 10 days.'' Under S. 2450, if additional time was necessary after the ''initial placement,'' the employee could then be placed on extended investigative leave. This parallel structure further supports the position that the 10-day period in section 6329a was meant to apply to administrative leave for investigative purposes and that, at the expiration of that ''initial placement,'' if necessary, the employee would be placed on a period of investigative leave.

In sum, the best reading of the relevant 10-day provision, based on the text, structure, and legislative history, is that it applies only to agency-directed placement on administrative leave for investigative purposes, including prior to placement on investigative leave, but excluding placement on general administrative leave related to other allowable uses. Accordingly, we are revising the proposed regulations in §§ 630.1404 and 630.1504(a). As part of the revisions, we are clarifying that the bar in section 6329b(b)(3)(A)—under which investigative leave may not be used unless the 10-workday annual limit has first been met—applies only to the placement of an employee on an *initial period* of investigative leave. The bar does not apply to an extension of investigative leave under section 6329b(c) (regulated in § 630.1504(f)) or a further extension of investigative leave under section 6329b(d) (regulated in § 630.1504(g)). Thus, for example, if a particular investigation of an employee begins in one calendar year and is extended or further extended in the next calendar year, there is no requirement to use 10 workdays of administrative leave for investigative purposes before approving an extension in the next calendar year.

Section 6329a(b)(1) also requires that the ''calendar year'' be used for this purpose, which in common usage is January 1 to December 31. OPM does not believe that any other period was intended by Congress. Because OPM has determined that the 10-workday annual limit applies only to administrative leave for investigative purpose, such administrative leave counts only against the 10-workday limit in the year it is used. For example, a six-day continuous period (excluding non-workdays) of administrative leave split evenly over the end of 2024 and the beginning of 2025 would have 3 days applied to each year's limit.

Comment: Three agencies, one union, and one individual opposed the requirement in proposed § 630.1404(a) that administrative leave used in different agencies must be aggregated so that an employee can be placed on administrative leave for no more than 10 workdays across agencies. One agency and the union said that the requirement to aggregate is not contained in the law. The union believed that, if Congressional intent was that this leave should be aggregated, the law would have stated the requirement differently. The union said that Congress clearly wrote the law to cover only an individual agency. One agency commented that the regulation imposes an unnecessary reporting and tracking requirement. Another agency said the requirement places an administrative burden on the new agency. A third agency noted that employees who reached their administrative leave limit because of an investigation, even though cleared, could not be granted administrative leave at the new agency. The individual believed that OPM's interpretation places an undue restriction on agencies that hire an individual who already reached the 10-day cap at the individual's former agency.

OPM response: As explained above, OPM reads section 6329a(b)(1) as applying the 10-workday annual limit only to administrative leave in which an employee is placed for investigative purposes. Because of this determination, OPM agrees that the annual limit applies on a per-agency basis.

Otherwise, the result would not track the intent of Congress and the purpose of the statute, as it would mean that one agency may place an employee on 10 days of leave pending an investigation; but, if the employee moves to another agency, then the second agency would not have the 10 days available within the same calendar year if needed. The 10-workday annual limit was intended to allow an agency to remove an employee from the workplace in the initial stages of an investigation without having to invoke the additional procedures in section 6329b. The annual count should therefore reset when an employee moves to another Federal agency. OPM is revising § 630.1404 to make clear that the 10-workday annual limit separately is applied to each agency that employs the employee during a calendar year. OPM is not adopting proposed paragraphs (c) through (e) of § 630.1404, since those paragraphs were based on the prior interpretation that the 10-workday annual limit applied to all types of administrative leave. Also, OPM is not adopting proposed § 630.1407, which would have imposed special recordkeeping and reporting requirements for employees who transferred or separated from an agency so that a gaining agency employing the employee in the same calendar year would be able to apply the 10-workday annual limit on administrative leave. With OPM's revised reading of the 10-workday limit and its application to employees transferring agencies within a calendar year, this section is no longer applicable.

Comment: An individual asked, in relation to the conversion of days to hours in proposed § 630.1404(b), how to determine the limit if part-time employees change their schedule in the middle of a period of administrative leave. The commenter also asked how to calculate the limitation if the change is retroactive.

OPM response: Under this final rule, the 10-workday annual limit applies only to administrative leave for investigative purposes. While that narrows the affected population of employees, there remains a need to address the calculation of days for employees in that population who have part-time or uncommon tours of duty. The proposed regulations on the 10-workday annual limit did address such employees but did not address the scenario of an employee switching to a different type of work schedule during the calendar year. OPM is adding a new paragraph (b)(4) in § 630.1404 to provide a methodology for addressing this scenario. In general, the methodology requires converting hours of administrative leave for employees on part-time or uncommon tours of duty to their equivalent value for an employee on a full-time tour. Then the actual hours of administrative leave used as a full-time employee and the converted hours of administrative leave used as a part-time or uncommon tour employee can be summed together and the resulting sum would be applied against the 80-hour limit for full-time employees. This can be done on a retroactive basis, where the result could mean that the employee's placement on administrative leave for investigative purposes has met or exceeded the limitation and any additional leave for investigative purposes would have to comply with the requirements of section 6329b.

OPM is also adding a new paragraph (j)(4) in § 630.1504 (dealing with the 30-workday and 70-workday limits associated with investigative leave) to address the same scenario of changing work schedules by incorporating the same methodology used in § 630.1404(b)(4).

Comment: Two unions, four agencies, and two individuals opposed the requirement in proposed § 630.1404(d) that agencies must first exhaust an employee's 10-workday limit on administrative leave before placing the employee on investigative leave. One union commented that there is no requirement in the Administrative Leave Act to first exhaust the limit on administrative leave. Both unions and two agencies noted that an employee placed on investigative leave, even though cleared during the investigation, could no longer be granted administrative leave for the remainder of the calendar year. An individual similarly thought the requirement was unfair. Another individual said there was no explanation for why administrative leave must be exhausted before investigative leave is used but not before notice leave is used. An agency said that the requirement is confusing, will be difficult to administer, and has no added value.

Additionally, a professional association said that the Act only specifies a 10-day cap on administrative leave with regard to investigative leave. The association believed the imposition of a 10-day cap on all administrative leave by the regulations would inhibit meetings between agency leaders and professional associations. Another agency asked that OPM clarify how it is not enforced leave when an agency is required to place an employee in nonpay status when the 10-workday cap is exhausted and the employee is not able to work or use leave during new administrative leave events.

OPM response: Section 6329a(b)(1) of the Administrative Leave Act specifies that an agency may not ''place'' an employee on administrative leave for more than 10 workdays per calendar year. Section 6329b(b)(3)(A) expressly requires that the 10-workday period of administrative leave be exhausted before an employee can be placed in investigative leave. (There is no similar requirement regarding notice leave.) In OPM's proposed regulations, we interpreted the 10-workday annual limit in section 6329a as applying to all types of administrative leave. Based on comments received and further analysis, we have revised our reading of this section, as explained elsewhere in this preamble. These regulations provide that the 10-workday annual limit applies only to administrative leave in which an employee is placed for purposes of an investigation of an employee's conduct, performance, or other reasons prompting an investigation. We conclude that the purpose of the 10-workday annual limit is to allow an agency to commence an investigation expeditiously without the additional requirements that follow in section 6329b. This revised reading addresses various concerns raised by the commenters. For example, and as explained above, this revised reading avoids situations where employees placed on administrative leave and later cleared of any wrongdoing following an investigation are deemed nevertheless to have exhausted their available annual allotment of administrative leave.

Comment: An agency stated that the requirement to place an employee in a leave without pay (LWOP) status may be appealed by the employee as a ''constructive suspension'' if the employee did not request it.

OPM response: As explained above, OPM has revised its interpretation of section 6329a to clarify that the 10-workday annual limit only applies to administrative leave for investigative purposes. This change should address the agency's concern regarding scenarios that could lead to LWOP status, since such a status will not be triggered by the effects of these regulations. *Comment:* An agency asked if there is an exception to the 10-workday limitation that would allow employees more time to participate in Employee Assistance Program (EAP) services.

OPM response: As explained above, OPM has revised its interpretation of section 6329a to clarify that the 10-workday annual limit applies only to administrative leave for investigative

purposes. An employee's participation in EAP services would be at the agency's discretion based on the Administrative Leave Act, these regulations, the agency's policies, and any other authorities or guidance relating to administrative leave.

Section 630.1406—Records and Reporting

Comment: Three agencies commented that ample time is needed to modify time and attendance systems because of the new reporting requirements. A fourth agency said that WebTA will need to be revised to include the new categories of leave. One of the agencies said that the systems should have the capability for alerts when leave limits are exceeded. An individual asked if the reporting will be in hours rather than days.

OPM response: OPM is working with agency payroll and shared service providers to prepare for the modification of current recordkeeping systems to accommodate the new data reporting requirements. As provided by the statute, agencies have 270 calendar days from the date of publication of these regulations to make the necessary changes in their recordkeeping and reporting systems. Agencies should communicate any needs for special functionality, such as alerts, to their payroll and shared service providers. Reporting of administrative leave will be by hours (or fractional increments of hours) used, not days of use.

Comment: One agency recommended eliminating the reporting of administrative leave that is used for investigative purposes, noting the extra burden involved and arguing that the law does not require reporting this category of leave.

OPM response: Section 6329a(c)(1)(B)(ii) requires OPM to regulate the proper recording of administrative leave. There is no exclusion for administrative leave used for investigative purposes. It is important to identify this specific usage, just as it is important to track how the other types of leave under the Act are used, especially since this type of administrative leave counts towards the 10-workday annual limit in section 6329a. OPM also anticipates Congressional interest in data on leave used specifically for investigative purposes separate from data on administrative leave used for general purposes. Therefore, we are not removing the requirement for the reporting of administrative leave used for investigative purposes.

Comment: The same agency recommended that OPM create two new timekeeping codes—one for back pay to preclude it from being recorded as administrative leave, and another for weather and safety leave to preclude individual agencies from developing their own specific code.

OPM response: OPM does not set the timekeeping codes used by agencies and therefore does not create these codes. Payroll and shared service providers specify the timekeeping codes to be used by their client agencies. In terms of data reporting to OPM's central payroll data system, OPM will establish data categories for the new types of leave established under the Administrative Leave Act. OPM established a payroll data category for weather and safety leave in 2018. OPM anticipates establishing a catch-all data category for paid time off granted under any authority that is not covered by any other specific payroll data category. OPM also may consider establishing data categories for other types of paid time off.

Comment: Two unions raised concerns about the protection of employees' rights under the Privacy Act (section 552a) with respect to agency records and reports on the use of administrative leave. The unions were concerned about the possible inappropriate dissemination of recorded details regarding the purpose of the leave (*e.g.,* medical concerns) or other sensitive information. They indicated a need for additional instructions for agencies to protect employees from inadvertent or improper disclosures. One of the unions recommended that OPM provide more detailed instructions in § 630.1406 regarding the reporting requirements.

OPM response: Any records an agency keeps on the use of administrative leave are subject to regular Privacy Act requirements. Section 630.1406 requires that usage of administrative leave under section 6329a and subpart N be recorded and reported using two subcategories: (1) administrative leave used for investigative purposes and (2) administrative leave for all other purposes. Section 630.1406 does not require the recording or reporting of additional details regarding why administrative leave was granted. However, section 1138(d)(2) of the Administrative Leave Act requires GAO provide reports to Congress every 5 years that evaluate the use of the section 6329a authority to grant administrative leave. Therefore, it is conceivable that GAO could seek additional information to the extent it is available in agency records.

Section 630.1407—Separation or Transfer

Comment: Four agencies commented on the certification and transmittal of administrative leave records for transferring employees. One agency stated that the new procedural requirements represent a significant administrative burden for agency compliance. The agency requested clarification on the manner of certification required and recommended that ample time be provided for agencies to make changes to their automated systems. The agency also recommended that OPM change the word ''one'' in the first sentence to ''each.'' Another agency asked if OPM will update Standard Form 1150 (Record of Leave Data) to accommodate the data reporting. Two other agencies expressed concern about the ability to transfer administrative leave records without modifications to the current system.

OPM response: OPM is not adopting the proposed § 630.1407, which had required transmittal of administrative leave records for transferring or separating employees. This change was made because OPM is clarifying that the 10-workday annual limit in section 6329a resets if an employee is transferred to a new agency.

Comment: An individual asked how the gaining agency will know the number of administrative leave days that have been used, especially for part-time employees, if the reporting is in hours. The individual also asked about situations where a part-time employee transfers to a full-time position with another agency or a full-time employee transfers to a part-time position and more hours are used under the full-time position than the part-time position allows.

OPM response: Administrative leave, like other forms of leave, must necessarily be used and recorded in increments of hours (or appropriate fractions of an hour). Thus, OPM's regulations provide that administrative leave must be converted to hours, considering whether the employee had a full-time, part-time, or uncommon tour of duty (§ 630.1404(b)). The proposed regulations did not address the scenario of an employee changing the type of work schedule during a calendar year, but OPM is adding a provision in the issued regulations to address this scenario. (See the new paragraph (4) in § 630.1404(b).) Because the regulations apply the 10-workday annual limit only to administrative leave for investigative purposes, the need to track hours vis-a-vis the limit

and to convert hours for employees with part-time and uncommon tours of duty is confined to uses of administrative leave for investigative purposes. We note, as described above, that the 10-workday annual limit in section 6329a resets if an employee is transferred to a new agency.

Subpart O—Investigative Leave and Notice Leave

General Comments

Comment: An agency observed that the proposed regulations did not address how to handle active investigation cases that are ongoing at the time the subpart O regulations become effective. The agency requested guidance regarding whether employees in ongoing cases on the implementation date would (1) be placed in an initial period of 30 workdays of investigative leave or (2) be placed first on administrative leave until the 10-workday limit is exhausted and then on investigative leave.

OPM response: An agency must revise and implement its internal policies to comply with subparts N and O within 270 days after publication of these regulations. Afterwards, use of administrative leave for investigative purposes must comply with these regulations by, first, exhausting the use of administrative leave under subpart N, followed by placing the employee on investigative leave under subpart O. The agency should not count any time an employee spent in an administrative leave status, even for investigative purposes, prior to it revising and implementing its internal policies towards the limitations established in these regulations.

Comment: An individual presented a scenario in which an employee who holds a non-critical sensitive position loses clearance eligibility and files an appeal over such loss. There are no non-critical sensitive positions in which to place the employee pending adjudication of the employee's appeal, and since an indefinite suspension is not permissible on grounds of clearance suspension, the commenter asked how this situation would fit under the proposed rules. An agency commented that the proposed regulations do not adequately address situations in which an employee's security clearance has been revoked or suspended and they are unable to perform work without proper security clearance. Employees are therefore placed on administrative leave in adherence with adjudicative requirements and to secure information pending final determination of their appeal of the revocation or suspension. The agency stated that the proposed regulations need to provide additional clarity regarding ''alternative use of administrative leave.''

OPM response: If an *investigation* is being conducted by an *investigative entity* (as those terms are defined under § 630.1502), in connection with the suspension or revocation of a security clearance, or an appeal from such an action, and the agency completes the required determinations of § 630.1503(b), then the agency may place the employee on administrative leave for investigative purposes until the 10-workday annual limit is exhausted, and then on investigative leave. The commenter's reference to ''alternative use of administrative leave'' appears to refer to what the statute calls investigative leave. Based on this comment, OPM will further amend the regulatory definition of the term *investigation* at § 630.1502 to make clear that periods of time during which an appeal of a security clearance revocation or suspension is pending should be considered part of an *investigation* within the meaning of this regulatory framework. Notice leave would not be applicable until such time as the employee receives notice of a proposed adverse action. To clarify that investigative leave may only be used when an investigation is being conducted by a person or persons meeting the definition of the term *investigative entity,* OPM is amending the definition of the term *investigation* to specifically refer to ''an inquiry by an investigative entity.'' Separately, under this hypothetical example, an agency may seek an indefinite suspension pending a final determination once it preliminarily determines to suspend or revoke an employee's access, or eligibility for access, to classified information, in the absence of contrary provisions found in an internal agency policy or collective bargaining agreement. Investigative leave under this scenario, therefore, is not the only available option.

Comment: An agency commented that the proposed regulations should include an additional category of leave that allows an agency to use excused absence from duty when a petition for review is pending before the Merit Systems Protection Board (MSPB or Board). Currently, if an Administrative Judge reverses or mitigates a removal action, an agency is required to place the employee back in a pay status even if the decision is appealed to the full Board for review. The agency concluded that, under the proposed regulations, an agency would be limited to using the 10 workdays of general administrative leave under subpart N and then be required to return the employee to a duty status. The agency believes that this is problematic since the employee does not meet the criteria for investigative leave or notice leave, yet it would continue to be in the best interest of the government not to have this employee in a duty status.

OPM response: By definition, the term *administrative leave* excludes leave that is authorized under any other provision of law (section 6329a(a)(1)(B) and § 630.1402). The agency comment is describing a situation in which an Administrative Judge is providing interim relief by restoring a separated employee to employment status pending the outcome of a petition for review, as authorized under section 7701(b)(2)(A)(ii)(II) and 7701(b)(2)(B). Under those statutory provisions, the agency may determine that the return or presence of the employee at the place of employment would be unduly disruptive to the work environment. If so, the employee is entitled to receive pay while in nonduty status during that interim period as if in duty status. Since another law authorizes pay for this type of nonduty status, it would not be appropriate to use administrative leave.

Comment: An agency asked if investigative leave counts when considering an excessive absence charge.

OPM response: Charges and penalties for attendance-related matters are outside the scope of this regulation. OPM notes, though, that in this scenario, the employee would be placed on investigative leave by action of an agency so we would not generally consider it appropriate to include investigative leave as a basis for an excessive absence charge. Additionally, it would not be appropriate to place an employee on investigative leave pending a potential adverse action if the employee is already absent from duty and, therefore, in a leave status.

Comment: An agency asked if OPM will issue guidance or provide further clarification on actions that take place during the investigative process—specifically, whether it is appropriate to include time preparing the investigative report and recommendations as a part of the investigative process.

OPM response: An agency may appropriately include time spent preparing an investigative report (including recommended actions) as part of the investigation period and thus continue investigative leave during that time. Similarly, as discussed in OPM's response to a comment concerning the definition of the term *notice period* and its potential impact on settlement

agreement negotiations, an agency may appropriately keep an employee in investigation status and investigative leave status while it is deciding whether to propose and/or preparing a notice of proposed adverse action. Based on these observations, OPM has amended the definition of the term *investigation* to include time spent preparing an investigative report and recommendation(s).

Section 630.1502—Definitions

Comment: An agency commented that the definition of the term *investigation* is overbroad and subjective. The agency stated that ''an investigation is defined as alleged misconduct that could result in adverse action.'' The agency further stated that it is unclear why the definition only refers to adverse actions and that the language is contradictory because there is a subsequent reference to disciplinary action.

OPM response: The term *investigation* encompasses a variety of inquiries that could eventually result in an adverse action as well as internal probes expressly focused on whether to commence an adverse action. Those actions could include, for example, an internal probe to determine the appropriateness of continued eligibility for access to classified information, or eligibility for logical or physical access to agency systems and facilities, as well as inquiries by the agency's Inspector General, the Office of Special Counsel, or the Attorney General—focused on their areas of jurisdiction—that could eventually produce information eventually leading to an action that is adverse to the employee. OPM has modified the definition of investigation in this final rule to remove the reference to disciplinary action. Finally, the modified language used to define the term *investigation* allows for an agency to fact-find and examine under a variety of circumstances and situations.

Comment: An agency requested clarification on the meaning of certain terms within the definition of *investigation:* specifically, ''similar authority,'' ''other matters that could lead to disciplinary action,'' and ''disciplinary action.'' The agency believes these terms are key to the scope of the new investigative leave provisions and, therefore, important to clarify.

OPM response: The phrase ''or similar authority'' in the definition of *investigation* refers to those agencies that operate under a different statutory authority that is equivalent to 5 U.S.C. chapter 75. Those agencies take adverse actions (or their equivalents) under authorities similar to 5 CFR part 752. The phrase ''other matters that could lead to disciplinary action'' may include a variety of circumstances and is intentionally broad to allow for agency discretion in such situations. The term ''disciplinary action'' in the proposed rule refers to an agency's administrative action taken to address an employee's misconduct. Nevertheless, OPM has revised the definition of ''investigation'' to eliminate the term ''disciplinary action'' and clarify that the regulation is intended to cover all types of matters that could lead to outcomes adverse to the employee—not only adverse actions taken under chapter 75 or similar authority.

Comment: An agency suggested the words ''logical'' access be changed to ''logistical'' access, with respect to the definition of the term *investigation.*

OPM response: The term ''logical access'' comes from Homeland Security Presidential Directive–12 (HSPD–12), dated August 27, 2004, and is used with respect to use of information systems.[33] It is the correct terminology in this context.

Comment: A union referenced the proposed regulatory definition of the term *investigation*—specifically, the third prong, ''other matters that could lead to disciplinary action.'' It asked if, in situations related to the investigation of an Equal Employment Opportunity (EEO) complaint, management could use the third prong of the definition of *investigation* to retaliate against the employee for filing an EEO complaint. The union stated that there should be explicit language that would not easily allow management to consider an employee who has filed an EEO complaint to be ''under investigation'' and be placed on investigative leave.

OPM response: The definition of *investigation* adequately describes the scope of the matters that may result in an inquiry by an investigative entity and the specific requested language is unnecessary. An employee's EEO complaint may result in an EEO investigation; however, that employee is not ''under investigation'' as a result of filing a complaint. Filing an EEO complaint is a protected right under existing statutes and there are existing laws to protect an employee from reprisal. Accordingly, this regulation does not consider the mere filing of an EEO complaint to be an action that could bring the employee under investigation, require the use of investigative leave, and lead to an adverse action.

Comment: An agency questioned whether the term *investigative entity* includes agency attorneys under the category ''other agency representatives.''

OPM response: The definition of the term *investigative entity* provides examples of what may be considered an internal investigative unit. It is not intended to be an exhaustive list. For example, agency counsel could be considered part of an investigative unit as an agency representative if they serve in that capacity.

Comment: An agency commented that the definition of *investigative entity* should be expanded to include external investigative units of any agency outside the agency granting investigative leave that have a role in the investigation of an employee. Agencies or investigative units outside the initial agency conducting the inquiry may be responsible for delays, including civil, criminal, or judicial proceedings that are not controlled by, or the responsibility of, the investigating agency. The agency asserted that these delays would require additional requests and approval of investigative leave beyond the initial period of 30 workdays and subsequent extensions of 30 workdays not to exceed the 90-day limit. The agency recommended that definition of *investigative entity* be amended as follows: ''(1) An external federal, international, state, or local investigative authority or internal investigative unit of an agency granting investigative leave under this subpart, which may be composed of one or more persons, such as supervisors, managers, human resources practitioners, personnel security staff, workplace violence prevention team members, or other agency representatives; . . . .''

OPM response: Section 6329b(a)(6) defines the term *investigative entity* as a limited, enumerated list of entities within the federal government. Because the Act already defines *investigative entity* in a restrictive way, OPM has determined not to expand upon this language to include ''external'' authorities not countenanced under the statute.

Comment: An agency commented that the proposed definition of the term *notice period* may inhibit the ability to use notice leave in circumstances where the parties engage in negotiation of a resignation/retirement agreement, after investigative leave but prior to the agency proposing an adverse action. The agency stated that, under the proposed regulation, agencies could not place an employee on notice leave (prior to

[33] *See* HSPD–12, ¶ 12 (''As promptly as possible . . . the heads of executive department and agencies shall, to the maximum extent practicable, require the use of identification by Federal employees and contractors that meets the Standard in gaining . . . logical access to Federally controlled information systems.'').

proposing removal) and that this may eliminate or adversely impact the ability of the parties to engage in settlement negotiations (*e.g.,* regarding resignation/retirement) or at least create a gap in coverage in some circumstances while an agreement is being negotiated.

OPM response: The agency is correct in stating that use of notice leave is restricted to the notice period. The regulation is consistent with the Act, which expressly requires that the notice period begin on the date an employee is provided notice of a proposed adverse action (section 6329b(a)(9)). Until the notice of proposed adverse action is issued to the employee, that employee will remain in investigation status, and if the criteria are met, the employee will be in an investigative leave status as well. Thus, an agency can avoid any gap and provide for consecutive use of the two types of leave, as appropriate.

Comment: An agency commented that proposed §§ 630.1502 and 630.1505(b) both discuss the limits on the length of notice leave, but there is ambiguity because the term ''duration'' does not appear within the definition of *notice period* in § 630.1502. The agency suggested amending the definition of *notice period* so that it reads, ''*Notice period* means a period, the duration of which begins on the date . . .''

OPM response: OPM does not view these sections as being ambiguous. Section 630.1502 establishes that the notice period begins on the date on which an employee is provided notice, as required by law, of a proposed adverse action against the employee and ends on the effective date of the adverse action or on the date on which the agency notifies the employee that no adverse action will be taken. This period of time is the duration of the notice period. Section 630.1505(b) establishes that the placement of an employee on notice leave shall be for a period not longer than the duration of the notice period.

Comment: A union recommended that the definition of *participating in a telework program* in proposed § 630.1502 be expanded to allow employees who are eligible to participate in a telework program, but not currently participating in such a program, to elect to voluntarily telework in lieu of being placed on investigative leave, subject to agency approval. The union stated this would be consistent with the statutory goals of limiting the amount of time that an employee who is under investigation is in a leave status and not performing work for the agency.

OPM response: OPM's regulations in § 630.1503(c) set how an agency can ''require'' telework for employees who are currently (or very recently) ''participating in a telework program.'' [34] OPM has determined that it would not be appropriate to require telework by employees who are not currently (or very recently) participating in a telework program since they would lack a voluntarily established telework arrangement. There is, therefore, no need to amend the definition of *participating in a telework program* to allow voluntary telework, since the term is used in subpart O only in connection with telework ''required'' by the agency. Voluntary telework is an option an agency may consider. If an employee who has not been participating in a telework program is willing to voluntarily begin such participation to avoid being placed on investigative leave, and if the agency concludes that permitting telework in these circumstances would not pose a threat to the employee or others, result in the destruction of evidence relevant to an investigation, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, there is no regulatory bar and no need for a special authority. It is a way of keeping the employee in duty status through telework duties, which is consistent with § 630.1503(b)(2)(i). Once an employee begins to voluntarily participate in a telework program, the employee would be a current participant and thereafter could be ''required'' to telework in lieu of investigative leave.

§ 630.1503(a), (b), and (e)—Authority and Requirements for Investigative Leave and Notice Leave; Baseline Factors

Comment: An agency stated that part of the intent of notice/investigative leave is to protect the public from harm and that OPM needs to be more specific as to whether this refers to co-workers or any person in the public located anywhere, as this is a condition agency management must consider in making a leave determination.

OPM response: OPM believes that the language of the regulation is sufficiently clear. Section 630.1503(e) states that, in making a determination regarding the criteria listed under paragraph (b)(1) of that section, an agency must consider, in part, whether the employee will pose an unacceptable risk to the life, safety, or health of employees, contractors, vendors or visitors to a Federal facility.

Comment: An agency asked who is an ''authorized agency official,'' for determining investigative leave and notice leave.

OPM response: For notice leave and the initial placement on investigative leave, the agency head has discretion to determine who constitutes an authorized agency official.[35] For extensions of investigative leave, approval levels are set in statute and the regulations.[36]

Comment: An agency commented it is unclear whether second-level approval is required for investigative leave and notice leave.

OPM response: Section 630.1403(a)(5)(ii) in this final rule requires that general administrative leave under subpart N be ''reviewed and approved by an official of the agency who is (or is acting) at a higher level than the official making the determination'' if the specific type of use and amount of leave for that use has not been authorized under established agency policy, but this requirement is not applicable to investigative leave and notice leave under subpart O. Additionally, while incremental extensions of investigative leave under § 630.1504(f)(1) are permitted only if approved by the Chief Human Capital Officer (CHCO) of an agency, or the designee of the CHCO (or, in the case of an employee of an Office of the Inspector General, the Inspector General or designee), there is no such requirement for notice leave because extensions are not applicable to notice leave. Thus, agencies have the discretion to establish the appropriate authority level for granting notice leave within their organizations, without regard to the regulatory requirements imposed for general administrative leave and extensions of investigative leave.

Comment: Two agencies were concerned that agencies would be required to take an employee off investigative leave during the period between completion of an investigation and issuance of a notice of proposed adverse action. One agency stated that requiring an employee to come back to work during this period would defeat the intent of the law and would run counter to the determination that placed the employee on investigative leave in the first place. The other agency noted that it is only after an investigation has been completed that an adverse action is usually considered and, depending on the complexity of the case, it takes time

[34] The condition for current or recent participation is found in § 630.1503(c)(1)(iii), not in the definition in § 630.1502.

[35] *See* § 630.1502 definition of *agency* in the context of describing who can make determinations and take actions.

[36] *See* section 6329b(c) and (d) and § 630.1504(f) and (g).

to prepare a proposed adverse action. The same agency pointed to the proposed regulation in § 630.1504(h), which stated: ''An agency may not further extend a period of investigative leave on or after the date that is 30 calendar days after the completion of the investigation of the employee by an investigative entity,'' suggesting there could be a gap in leave.

OPM response: It is true that notice leave may not commence until the employee has received a notice of proposed adverse action. The law does not establish any particular cut-off event for investigative leave; however, and, so long as the agency is still engaged in the process of considering the evidence, framing potential charges, and assessing whether any additional investigation is required, the agency may reasonably regard the investigation as not yet concluded. As described above, an agency can avoid any gap in leave by providing for consecutive use of the two types of leave, as appropriate. An agency may keep an employee in investigation status and covered by investigative leave until it issues a notice of proposed adverse action. The regulation § 630.1504(h) referenced in one of the agencies' comments does not prevent an agency from considering necessary work on a planned notice of adverse action to be part of the period of investigation. In any event, § 630.1504(h) applies only to ''further'' extensions of investigative leave under § 630.1504(g).[37] OPM is clarifying this in the issued regulations.

Comment: An agency referenced the preamble of the proposed regulations related to § 630.1503(a)(2)(i), which stated, ''Agencies should be mindful, however, of any internal procedures related to the preparation and approval of adverse action before it is issued.'' The agency commented that agencies should also be mindful of collective bargaining provisions since compliance with such provisions is required under chapter 71.

OPM response: OPM agrees that agencies should also be mindful of relevant, enforceable collective bargaining provisions but notes that, while some procedures and arrangements related to adverse actions are negotiable, the right to discipline is reserved to agency management by 5 U.S.C. 7106.

Comment: An agency indicated that proposed § 630.1503(b) requires a ''determination'' to initially place an employee on investigative leave or notice leave but does not clarify whether this determination must be made in writing or identify who makes the determination.

OPM response: The proposed regulations did not directly address these points. The initial determination to place an employee on investigative leave or notice leave will be made by the appropriate agency official at the agency's discretion and after the agency has made the required determinations. However, any extensions of investigative leave must be approved by certain designated officials based on a written determination. Based on the comment, OPM is revising § 630.1503(b) to explicitly require a written determination to support the initial decision to place an employee on investigative leave or notice leave. This is consistent with the recordkeeping requirements in § 630.1506, which requires that an agency maintain an accurate record of the placement of an employee on investigative leave or notice leave.

Comment: An agency stated that the word ''threat'' in proposed § 630.1503(b)(1)(i) either needs to be defined or changed to ''a disruption to the workplace.'' Without this definition, the agency contends that its managers will revert to the analysis in *Metz* v. *Department of the Treasury,* 780 F.2d 1001 (Fed. Cir. 1986) (directing MSPB adjudicators to consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances in sustaining adverse actions based upon threats). The agency asserted that not all workplace disruptions rise to the level of threat or imminent threat and believes that the language in the proposed rule would limit management's flexibility in removing employees from the workplace pending completion of an inquiry or investigation.

OPM response: We understand the concern, although *Metz* dealt with oral or written threats as the bases for the underlying adverse action, and the court's analysis was limited to that specific scenario. The Act, in contrast, uses the word ''threat'' to mean a broader variety of risks the employee could pose toward agency people, information, facilities, and information systems if the employee were permitted to continue to have access to the workplace or agency systems during the pendency of the employee's investigation. Thus, the word is used differently than in *Metz.*

Consideration of this comment, however, has caused us to make revisions. The statute, especially the fourth category of potential harms, authorizes an agency to determine whether the employee's presence is consistent with a legitimate Government interest. This provision is similar to the undue-disruption determination regarding interim relief in section 7701(b)(2)(A), which is unreviewable.[38] Accordingly, we have added language to the proposed regulation at § 630.1503(a) to make clear that all determinations made under section 6329b are within the authority of the agency.

Comment: A commenter stated that proposed § 630.1503(b)(1)(ii) is too narrow and the regulation should be broadened to address obstruction, rather than just destruction of evidence, because destroying evidence is only one way that an employee could obstruct, or attempt to obstruct, an investigation.

OPM response: The language in § 630.1503(b)(1)(ii) is the exact language used in the Act. The language does not preclude obstruction as part of the determination, especially since the fourth category under the statutory requirements is broad, asking whether the continued presence of the employee in the workplace during the investigation or while in the notice period may ''otherwise jeopardize legitimate Government interests.'' Accordingly, the requested revision is unnecessary.

Comment: An agency referenced proposed § 630.1503(b)(2)(i) which sets the option, in lieu of investigative or notice leave, of keeping an employee in a duty status by assigning the employee to duties in which the employee does not pose a threat. The agency noted that, while not stated in the proposed regulation, the preamble of the proposed rule stated, ''The duties should be at the same grade level as the employee's current position.'' The agency stated that they may not have duties available at the same grade level as the employee's current position, but they may have duties available at a lower-grade level and it would be preferable to have the employee perform duties that further the agency's mission, rather than placing the employee on administrative or investigative leave.

OPM response: OPM agrees that, while employees should generally be assigned duties at the same grade level as the employee's current position, it may not always be possible. Such inability does not prevent the agency from assigning the employee to other duties under § 630.1503(b)(2)(i) particularly when such duties are temporary in nature as contemplated in this scenario.

[37] *See* also section 6329b(d)(1) and (3).

[38] *See King* v. *Jerome,* 42 F.3d 1371 (Fed. Cir. 1994).

Comment: Two unions referenced proposed § 630.1503(b)(2)(ii), which is related to the voluntary use of other forms of paid or unpaid time off in lieu of investigative leave or notice leave. The unions stated that this provision should be clarified so that agencies do not overtly or implicitly encourage employees to use their other forms of leave. The unions further stated that OPM should require agencies to notify employees that the use of other forms of leave in lieu of investigative leave is strictly voluntary and that the employee has the right to use paid investigative leave instead.

OPM response: Consistent with section 6329b(b)(2)(B)(ii), § 630.1503(b)(2)(ii) sets the option of ''allowing'' an employee to voluntarily take leave (paid or unpaid) or other forms of paid time off, as appropriate under the rules governing each category of leave or paid time off. An employee who is under investigation or in a notice period may elect to take annual leave, sick leave (as appropriate), restored annual leave, or any leave earned under subchapter I of chapter 63, U.S. Code. The employee may also elect to use other paid time off to remain in a pay status, such as compensatory time off earned through overtime work, compensatory time off for travel, and credit hours under a flexible work schedule, as appropriate. An employee may elect to take leave or other paid time off for which the employee is eligible on an intermittent basis, as appropriate, during a period of investigative leave or notice leave. As stated in the preamble of the proposed regulations, ''Agencies may not require employees to take accrued leave or other time off as a substitute for investigative leave or notice leave.'' Section 630.1503(d)(1) provides that an employee on investigative leave or notice leave must be prepared to report to work at any time during the employee's regularly scheduled tour of duty or must obtain approval of the appropriate leave to eliminate the possible obligation to report to work if the employee will be unable to report promptly if called. Because of this requirement, it may be advantageous for an employee to voluntarily request to use leave or time off in place of investigative leave or notice leave if they may be unavailable to report to work. Because § 630.1503(b)(2)(ii) makes clear that use of other leave or time off is voluntary, OPM is making no change to the provision.

Comment: An individual stated that the proposed § 630.1503(b)(2)(ii) and (b)(3) are unclear and at odds with OPM's explanation of them in the preamble to the proposed rule. The individual asserted that the proposed regulations specify that, to place an employee in investigative leave or notice leave, agencies must consider allowing employees to voluntarily take leave and determine that this option would ''not be appropriate,'' but that the regulation contains no explanation of circumstances when it would not be appropriate to allow an employee to voluntarily take leave during an investigation or notice period. The individual argued that this could lead to inconsistent implementation and confusion among Federal agencies. The individual further stated that, if appropriateness is measured solely by the rules governing each category of leave or paid time off, an agency could potentially never determine to place an employee in investigative leave or notice leave as long as the employee had a positive balance of leave or other paid time off that could be used during an investigation or notice period. The individual believes OPM should clarify these provisions in the regulations and its explanation to give agencies clearer guidance regarding the circumstances under which it would not be appropriate to allow an employee to voluntarily take leave in lieu of investigative leave or notice leave.

OPM response: OPM disagrees and considers the regulations to be clear as written. Section 630.1503(b)(2)(ii) states that an agency can ''allow'' the employee to ''voluntarily'' take leave (paid or unpaid) or paid time off, as appropriate under the rules governing each category of leave or paid time off. The language ''as appropriate under the rules governing each category of leave or paid time off'' refers to the permissible uses of the various types of leave. For example, under § 630.1503(b)(2)(ii), it would not be appropriate to allow an employee to voluntarily take sick leave to avoid reporting for duty, when directed, during a period of investigative leave or notice leave, unless the leave was otherwise a permissible use of sick leave. Accordingly, when the agency makes its determination under § 630.1503(b)(3) as to whether any of the options under § 630.1503(b)(2) are appropriate, the agency will find that § 630.1503(b)(2)(ii) is not an available option if the agency denies the employee's leave request. Conversely, if an employee requests leave that is appropriate under the rules governing that category of leave, then the agency will determine, under § 630.1503(b)(3), that there is an appropriate option. Section 630.1503(d)(1) requires that an employee on investigative leave or notice leave be prepared to report to work at any time during the employee's regularly scheduled tour of duty or obtain approval of another form of leave, as appropriate, if the employee will be unable to report promptly if called.

Comment: With respect to proposed § 630.1503(b)(2)(ii), two agencies asserted that it is unrealistic to assume an employee would elect to take other forms of paid leave in lieu of administrative leave. However, if an employee is on administrative leave, it would be reasonable to *require* the employee to substitute more appropriate leave types if the employee becomes ill, wishes to invoke annual leave to take a trip, etc. The agencies recommended a modification to the provision such that, while on administrative leave, an employee is required to substitute with other paid leave where appropriate. The agencies believed this change would allow agencies to record an employee's time more accurately.

OPM response: The agencies' concern is already addressed within the regulation. Section 630.1503(d) allows the employee to request annual or sick leave (as appropriate) while on investigative or notice leave because the employee must be prepared to report to work at any time during the employee's regularly scheduled tour of duty. If the employee anticipates a possible inability to report promptly, the employee must obtain approval of another form of leave in advance of the date or dates that the employee will be unavailable.

Comment: Two agencies referenced use-or-lose leave and its relationship with proposed § 630.1503(b)(2)(ii). The agencies noted that this section does not address a situation when an employee is on investigative leave or notice leave and has (or will have) an annual leave balance in excess of the maximum carryover of 240 hours (for non SES-employees). The agencies asked whether an agency can require employees who are in a ''use-or-lose'' status to use their annual leave, or if restored leave should be granted.

OPM response: The procedures and requirements for restoration of annual leave are not impacted by this rule. Being placed on investigative leave or notice leave does not relieve an employee of the responsibility to schedule annual leave that would otherwise be forfeited. If the employee fails to request and schedule the use of annual leave that would otherwise be forfeited, the agency cannot restore it to the employee. If the agency denies such

a timely request, the agency is required to restore the annual leave.

Comment: Two agencies asserted that the OPM proposed rule sets an almost unattainable standard by requiring that an agency establish that an employee ''will'' (as opposed to ''may reasonably'') pose a risk of harm to others and/or Government property to justify placing the employee on investigative leave or notice leave. The agencies stated that ''reasonable'' concern should be sufficient to invoke investigative leave or notice leave. One agency objected to language in the proposed regulations stating that ''The agency may not arbitrarily place individuals on investigative leave or notice leave based upon fear of a future risk without engaging in an individualized assessment that establishes that there is a significant risk of substantial harm that cannot be eliminated or reduced by other means,'' and argued that this assessment and high standard would create a less safe working environment for civil servants, which was not the intent of Congress. The agency suggested that the factors do not consider situations where an employee's presence in the workplace is not a threat to safety but would be disruptive and the agency should not have to reach the threshold of threats of harm for an employee to be removed from the workplace. The agency believed that requiring an agency to ''establish that there is a significant risk of substantial harm'' hampers the ability of that agency to continue everyday operations uninterrupted.

OPM response: OPM agrees that requiring a showing of a ''significant risk'' would set an inappropriately high standard. Neither the Act nor the regulatory text establishes such a standard though. Under § 630.1503(b), an agency may place an employee on investigative leave or notice leave when it determines that the continued presence of the employee ''may'' (1) pose a threat to the employee or others, (2) result in the destruction of evidence relevant to an investigation, (3) result in loss of or damage to Government property, or (4) otherwise jeopardize legitimate Government interests. The baseline factors set out at § 630.1503(e) guide the § 630.1503(b) determination—each factor must be considered when determining whether an employee should be placed on investigative leave or notice leave. As noted in the proposed regulations, ''agencies should exercise independent, reasonable judgment in evaluating each particular situation,'' [39] including the discretion and responsibility to assess and determine what constitutes ''other impacts of the employee's continued presence in the workplace detrimental to legitimate Government interests'' under § 630.1503(e)(3). An agency has discretion to determine that an individual poses an unacceptable risk to the life, safety, health, or privacy interests of others and/or Government property, which is sufficient to invoke investigative leave or notice leave. We have revised the regulation accordingly.

Comment: An agency noted that the baseline factors include an evaluation of the duration of the risk; the nature and severity of the potential harm; how likely it is that the potential harm will occur; and how imminent the potential harm is. The agency believes that these are difficult factors to evaluate and urges OPM to provide examples or further explanation regarding these factors. The commenter also requested OPM explain how agencies' policies regarding workplace violence would impact any individual assessment.

OPM response: The baseline factors in § 630.1503(e) are to be used as a starting point when determining whether an employee should be placed on investigative leave or notice leave. OPM expects agencies to exercise independent, reasonable judgment in evaluating each particular situation. The baseline factors, while a required consideration, are meant to be applied to the specifics of each individual situation. Agencies should review their workplace violence policies to determine how they interact with the requirements of the new regulations.

Comment: A union referenced the baseline factors in proposed § 630.1503(e), specifically (e)(1), ''the nature and severity of the employee's exhibited or alleged behavior'' and asked if this would apply to employee posts on social media.

OPM response: As previously noted, the baseline factors in § 630.1503(e) are a starting point in determining whether an employee should be placed on investigative leave or notice leave. Each baseline factor must be considered. OPM expects agencies to exercise independent, reasonable judgment in evaluating each situation, and agencies should consult with their human resources office or their general counsel's office, or both, to the extent appropriate, before placing an employee on investigative leave or notice leave. An employee's social media activity, either by itself or in conjunction with other information, may prompt an evaluation under the baseline factors.

Comment: An individual stated that the baseline factor at proposed § 630.1503(e)(3)(ii), regarding risk to the Government's physical assets or information systems, should be amended to include intangible assets, such as rights in intellectual property.

OPM response: The examples of legitimate Government interests in § 630.1503(e)(3) are not a comprehensive list. An agency may consider other legitimate Government interests, including any intellectual property rights the Government might possess as well.

Comment: An agency stated that there might be due process concerns when an employee's access to government computers and/or systems is terminated or suspended. The agency questioned how the agency would allow the employee access to electronic data for the purposes of ''defending him/herself'' if an action were taken against the employee.

OPM response: This comment is outside the scope of this regulation. The procedural requirements for taking an adverse or performance-based action are not impacted by this rule.

Section 630.1503(c)—Required Telework

Comment: An agency asserted that proposed § 630.1503(c) establishes that telework is an alternative to investigative leave but omits any reference to notice leave. The agency sought clarification regarding whether telework is an option during notice leave.

OPM response: Section 630.1503(c) pertains to an agency's authority to ''require'' an employee in an investigation status to telework. The Administrative Leave Act added section 6502(c) in the telework law.[40] The section expressly authorizes agencies to require an employee to telework in lieu of investigative leave. Section 6329b includes agency requirements for reporting on employees required to telework under section 6502(c). But while section 6502(c) deals with required telework as an alternative to investigative leave, there is no similar provision providing for required telework in lieu of notice leave. However, there is no prohibition on an employee teleworking, consistent with an agency's internal policy, in lieu of notice leave, if the agency determines that is appropriate. OPM does not believe further clarification is necessary in the regulatory text.

Comment: Two agencies observed that section 6502(c) seems to require an agency to place an employee on investigative leave before the agency

[39] 82 FR 32268.

[40] *See* 5 U.S.C. 6502(c).

may require telework. One agency contended that an employee on investigative leave cannot be teleworking at the same time, which section 6502(c) seems to suggest is possible. The other agency contended that OPM regulations were not consistent with section 6502(c)—that employees should be placed on investigative leave before an agency can require telework. In addition, a union was concerned that an employee performing required telework in lieu of investigative leave would be considered, inaccurately, to be on investigative leave. The union recommended adding an express statement in the regulations that placement in a telework status does not constitute investigative leave status.

OPM response: OPM agrees with one agency's conclusion that, by definition, an employee in a required telework status is in a work status, not an investigative leave status. Since ''work'' does not constitute ''leave,'' OPM is not adding a statement to that effect, as recommended by the union, because it is unnecessary. Also, in this rulemaking, OPM interprets section 6502(c) to mean that telework may be required only when the employee would satisfy the legal conditions for investigative leave under section 6329b and would *otherwise* be placed on such leave.[41] If an employee should be placed on investigative leave following the required 10-workday period in section 6329a, it would not make sense to require a de minimis period of investigative leave before required telework can begin. The key point is that an agency may not require telework under section 6502(c) unless the employee would be placed on investigative leave but for the telework.

Comment: An agency and an individual questioned OPM's authority to direct an employee to telework in lieu of investigative leave, since telework has always been voluntary. The agency raised concerns that an employee's home may not always be available for business purposes—*e.g.,* a spouse needs to use the home office or children are at home on certain days.

OPM response: As described above, the Administrative Leave Act added section 6502(c) in the telework law in 2016. It expressly authorizes agencies to require an employee to telework in lieu of investigative leave. Consistent with section 6502(c), § 630.1503(c)(2) provides that any voluntary telework agreement must be superseded as necessary to comply with an agency's action to require telework. OPM is exercising its regulatory authority in a manner consistent with the authority granted pursuant to the Act.

Agency telework policies will govern whether telework is appropriate in specific circumstances. OPM notes that agencies can change their telework policies and make special exceptions to policies for employees who are required to telework under section 6502(c).

Comment: An agency recommended that OPM clarify in the regulations that agencies have discretion to require telework in lieu of investigative leave and to specify the duration and location of that telework assignment (*e.g.,* home versus agency telework center). The agency stated this clarification would stem potential litigation under collective bargaining agreements and provisions relating to voluntary telework under the regular telework law. The agency noted a parallel example of an OPM regulation in § 531.605(d)(4) giving agencies discretion to determine an employee's official worksite.

OPM response: OPM agrees with the agency recommendation. Section 6502(c) authorizes agencies to ''require'' telework based on agency determinations.[42] The authority to require telework necessarily includes an obligation to specify the duration and location of the telework assignment. Accordingly, OPM is revising the regulation at § 630.1503(c) to clarify that the agency determination to require telework (including all related conditions and requirements), like the other determinations under these regulations, are to be made at the agency's discretion. Furthermore, since required telework is in lieu of placement in an investigative leave status, OPM is revising these regulations to require agencies to provide the employee with a written explanation regarding the required telework, similar to the explanation provided to employees when placed on investigative leave in paragraph (c) of section 630.1504.

Comment: An individual commented that proposed § 630.1503(c)(2) is unnecessarily duplicative of § 630.1503(c)(1)(ii).

OPM response: Paragraph (c)(1)(ii) of § 630.1503 is a brief restatement of the statutory requirements of section 6502(c)(2), whereas paragraph (c)(2) explains the meaning of ''eligible to telework'' as used in paragraph (c)(1)(ii). To avoid redundancy, OPM has shortened paragraph (c)(1)(ii) to state only the statutory requirement that an employee be eligible to telework with paragraph (c)(2) providing additional details regarding eligibility and agency implementation.

Comment: An agency noted that most agency telework policies terminate or suspend participation for employees with either a conduct or performance issue, which the agency viewed as conflicting with the proposed regulation providing for telework as a possible alternative to investigative leave. The agency contended that OPM would need to carve out an exception to such agency telework policies. Two other agencies expressed concern that telework would be seen as a reward for misconduct and would likely produce no benefit for the agency. The two agencies acknowledged that agencies would not be required to use the telework option but were concerned that there would be pressure to allow telework in these instances. The two agencies stated that telework should not be allowed unless employees have a fully successful performance rating, a good conduct record, and are not a potential threat to agency facilities or personnel. An individual commenter raised similar concerns about allowing employees with performance, conduct, or behavioral problems to telework, contrary to normal agency policies.

OPM response: While the Administrative Leave Act requires agencies to consider certain options before approving use of investigative leave (see section 6329b(b)(2)), the Act does not require agencies to consider the telework option (see section 6502(c)). An agency has discretion in deciding whether it will require telework by an employee who would otherwise be placed in investigative leave, subject to the conditions set forth in law and regulation. As stated in § 630.1503(c)(1)(ii), telework may be required only if the employee is eligible to telework under the conditions set forth in section 6502(a) and (b)(4)—*e.g.,* an employee is not eligible if the employee has been officially disciplined for certain reasons, such as for viewing pornography on a Government computer. As further stated in § 630.1503(c)(1)(i), before an agency requires telework, it must determine that it would not pose certain risks to Government personnel, property, or other interests. After applying the above-described conditions, the agency still has the discretion to not require telework if it determines it would be inappropriate.[43] Given the degree of agency discretion, OPM does not believe the regulations would conflict with agencies' existing telework policies. OPM notes that, although the use of

[41] *See* § 630.1503(c)(1).

[42] *See* the language ''the agency determines'' in section 6502(c)(1) and (3).

[43] *See* § 630.1503(c)(1)(iv).

telework is not subject to the approval and reporting accountability measures in place for use of investigative leave, agencies should continue to manage telework and hold employees accountable for productive work based on their experience in administering telework programs.

Comment: Two agencies questioned whether agencies are responsible for providing equipment necessary for an employee to telework when required in lieu of investigative leave. One agency noted that the preamble to the proposed regulations stated that an agency must provide employees who are required to telework in lieu of investigative leave with appropriate equipment. The other agency asked about funding the employee's internet capability at home. Both agencies raised the possibility of legal issues associated with requiring employees to telework at home when they must consume personal resources to conduct Government business. One agency also asked if OPM would be issuing updated telework guidance in conjunction with this final rule.

OPM response: Congress provided specific legal authority in section 6502(c) for agencies to require telework in lieu of investigative leave. Since telework will be required only for employees who are current (or recent) [44] telework program participants, it is anticipated that any mandatory telework would be consistent with and would apply the terms of the employee's regular telework arrangement and that, as a condition of teleworking, employees would have already satisfied all eligibility criteria, including procuring necessary equipment. Any issues related to agency obligations to spend funds to support telework in an employee's home are outside the scope of these regulations. OPM will consider whether updating its existing telework guidance and leave guidance is necessary.

Comment: An agency objected to proposed § 630.1503(c)(1)(iii), which provides that telework may be required only for an employee who has been participating in a telework program during some portion of the 30-day period immediately preceding the commencement of investigative leave (or the commencement of required telework in lieu of such leave). The agency stated that management should be given greater flexibility to require telework by changing the regulation to either (1) have no time requirement (*i.e.,* require past participation at any time) or (2) extend the time requirement from 30 days to 180 days. The agency maintained that the law does not require that an employee must have been participating in a telework program prior to being placed in one in lieu of investigative leave.

OPM response: As OPM stated in the preamble for the proposed regulations,[45] this condition limiting telework in lieu of investigative leave only for employees who are current (or recent) telework program participants was based on OPM's understanding of Congressional intent. Section 6502(c) references the eligibility conditions in section 6502(b), which applies to ''participation'' in a telework program. This language indicates that Congress intended to allow agencies to require telework of employees who were already telework program participants. The 30-day time period was adopted, in part, as a protection against an employee cancelling participation in a telework program shortly before the agency would require telework. OPM considers this to be a sufficient period of time to accomplish that objective.

Comment: A union objected to the proposed § 630.1503(c)(3), which states an agency may place an employee in absent without leave status if an employee who is required to telework under § 630.1503(c)(1) is absent from telework duty without approval (*i.e.,* AWOL). An agency also raised concerns about the possibility of placing an employee on AWOL status. The union was concerned that an agency might incorrectly determine that an employee on telework duty was absent from work after a brief absence from the telework site or failure to respond immediately to an inquiry from the employer. For example, a supervisor might call the employee on telework duty when the employee is teleworking from outside the home or unable to immediately take the call and make the inaccurate assumption that the employee is absent from telework duty. The union added this risk is compounded by an employee's flexibility in determining a telework location.

OPM response: This regulation states that an agency ''may'' place an employee in AWOL status if the employee is absent from telework duty without approval, consistent with agency policies. Before placing an employee in AWOL status, the supervisor must follow normal agency policies to determine if the employee is absent without approval. The regulation does not change these protocols. Agencies are also responsible for ensuring that telework agreements clearly identify expectations, including what constitutes an approved telework location. OPM is therefore not changing this provision.

Comment: An agency understood that some employees not currently eligible for telework could be required to telework in lieu of investigative leave. The agency asked if there would be legislative updates to the telework law or in OPM guidance on teleworkers.

OPM response: The regulations provide that telework may be required only for an employee who is ''participating in a telework program,'' as defined in § 630.1502, during some portion of the 30-day period immediately preceding the commencement of required telework.[46] Also, an employee may be required to telework only if he/she is eligible to telework under section 6502(a) and (b)(4).[47] The employee must therefore be telework-eligible under the agency's normal telework policies and must be a current or recent telework program participant. The new section 6502(c) that authorizes required telework in lieu of investigative leave is itself a legislative update. Forecasting any additional legislative updates is beyond the scope of these regulations; however, these regulations do not require any further legislative updates. OPM will consider whether updating its existing telework guidance and leave guidance is necessary.

Section 630.1503(d)—Reassessment and Return to Duty

Comment: Regarding proposed § 630.1503(d)(1) and (d)(4), two agencies asked for the specific time frame in which an employee would be expected to ''report promptly'' if an agency requires the employee to return to duty. A third agency asked OPM to consider adding ''normally within 2 hours,'' or include a reasonable standard that would address what is meant by a ''prompt'' return to work. The agency opined that the additional language would lead to less confusion between managers and employees in determining whether an employee has returned to duty ''promptly.''

OPM response: Agencies are responsible for establishing reporting requirements and communicating expectations to employees when they are notified of placement on investigative leave or notice leave, including what is meant by ''report promptly,'' as this could vary depending

[44] See following comment and response for an explanation of the qualification that telework participation be current or recent.

[45] 82 FR at 32270.

[46] *See* § 630.1503(c)(1)(iii).

[47] *See* § 630.1503(c)(1)(ii).

on an agency's and employee's particular situation.

Comment: An individual stated that proposed §§ 630.1503(d)(1) and (d)(4) are substantially similar regarding the employee's obligation to be available at any time and request leave if unavailable and recommended edits for brevity and combining the sections.

OPM response: OPM agrees that there is some redundancy between paragraphs (d)(1) and (d)(4). In this final rule, the paragraphs are revised to address that redundancy.

Comment: An agency recommended that proposed § 630.1503(d)(4), providing that an employee who is placed on investigative leave or notice leave must be available to report promptly to an approved duty location, should allow reporting at the start of the next business day to be considered ''prompt'' reporting. The agency asserted that it may be impossible for an employee to physically report to work on the same day the employee is instructed to do so, given mass transit schedules and other limitations on commuting over which the employee may have no control. The agency asserted that, at a minimum, the employee should be permitted to take leave (even if not requested in advance) for the remainder of that day and report to work without penalty at the start of the employee's tour of duty on the next business day.

OPM response: Agencies are responsible for establishing reporting requirements and communicating expectations to employees when they are notified of placement on investigative leave or notice leave, including what is meant by ''report promptly,'' as this could vary depending on an agency's and employee's particular situation.

Section 630.1504(b)—Duration of Investigative Leave

Comment: A union recommended that OPM revise the language in proposed § 630.1504(b) to clarify that any interruptions in investigative leave would extend the amount of investigative leave available by the number of days of interruption. The union asked if, in the case of an employee whose initial 30-day period of investigative leave is scheduled to end on July 15, but who opted to take 2 days of sick leave in the first week of July, the period of investigative leave would be extended until July 17.

OPM response: Technically, the period of investigative leave is not extended by interruptions but the calendar date on which the employee will have been placed on 30 workdays of investigative leave may need to be adjusted if there are any interruptions in investigative leave. The duration of investigative leave is based on the number of ''workdays'' on which an employee is *on investigative leave.* If a period of investigative leave is interrupted, the employee is not on investigative leave during the interruption, and those days would not count against the 30-workday limit. Because investigative leave may be charged solely on regular workdays, any paid holidays, for example, would also interrupt investigative leave (see references to ''workdays'' in § 630.1504). OPM will also emphasize this point in its supporting guidance.

Comment: An agency asked if there is a limit to the hours of investigative leave that can be authorized.

OPM response: There is no statutory limit; however, agencies must comply with the requirements for approving extensions (§ 630.1504(f)) and further extensions (§ 630.1504(g)), both of which may be made in increments of up to 30 workdays.

Comment: An agency stated that, under the proposed regulations, agencies can extend the investigative leave and notice leave periods in 30-workday intervals, up to 90 workdays, and may extend the period beyond 90 workdays where appropriate. The agency believed that these ''open-ended extensions'' are tantamount to unscheduled paid vacation for employees suspected of misconduct and can, in some instances, be viewed as disciplinary actions under chapter 75 without due process. The agency proposed that the investigative leave and/or notice leave periods be limited to 60 days with no extensions. The agency further proposed that the CHCO be given the authority to delegate their authority to grant or deny extensions.

OPM response: First, the agency is incorrect in its interpretation that notice leave has extensions. Extensions are only applicable to investigative leave. Additionally, the authority to allow extensions of investigative leave beyond a total of 60 workdays is specifically authorized by statute. The extensions to investigative leave are, by definition, not open-ended, and are neither ''unscheduled paid vacation'' (because the employee must be ready to return to work at any time), nor a punishment (as the employee continues to be compensated). The extensions are meant to further protect the Government from harm to people, data, systems, and facilities while the investigation is completed. Once the maximum number of extensions is reached under § 630.1504(f)(2), further extensions require a report to Congress (*see* § 630.1504(g)). Accordingly, OPM will not adopt the agency's proposal that investigative leave and/or notice leave be limited to 60 workdays. Regarding the agency's proposal that the regulations authorize agency CHCOs to delegate their authority for granting or denying extensions, the Act and rule already specify that incremental extensions of investigative leave are permitted only if approved by the CHCO of an agency or the CHCO's designee. There is no need to delegate authority to deny a request for an extension, since extensions of investigative leave will not occur without a positive approval.

Comment: A union referenced the preamble of the proposed § 630.1504 which stated that ''[a]gencies are expected to expeditiously work to resolve investigations'' (82 FR 32270). The union asserted that this language does not appear in the text of the proposed regulations and stated that it is important to include such language in the regulations because many agencies do not give investigations the appropriate level of urgency.

OPM response: In section 1138(b) of the Act, Congress indicated that usage of administrative leave had, in Congress's view, exceeded reasonable amounts and resulted in significant costs to the Government. Congress stated that agencies should (1) use administrative leave sparingly and reasonably, (2) consider alternatives to use of administrative leave when addressing personnel issues (*e.g.,* employees are under investigation), and (3) act expeditiously to conclude investigations and either return the employee to duty or take an appropriate personnel action. Thus, agencies are expected, by statute, to conclude investigations expeditiously and to take appropriate action afterwards. We note, however, that some investigations covered by the Act are controlled by an entity outside the employing agency, *see* 5 U.S.C. 6329b(a)(6), and that other investigations within the agency's control may pose issues that require evidence that takes time to gather. Neither the statute nor the regulations, therefore, impose a time limit on the duration of an investigation but they do institute accountability measures on the use of investigative leave, which will encourage expeditious and appropriate resolution where the agency controls the investigation.

Section 630.1504(c)—Written Explanation to Employee Regarding Placement on Investigative Leave

Comment: Regarding the written notice to an employee under proposed

§ 630.1504(c), advising them that they are being placed on investigative leave, an agency requested clarification as to the information required and the information within the discretion of the agencies to include through implementing policy. The agency also requested clarification regarding whether an agency must include a notice of appeal rights in a notice where the employee is placed on investigative leave for 70 workdays or more, since that is deemed to be a ''personnel action'' under the prohibited personnel practices provisions.

OPM response: Section 630.1504(c) states that, if an agency places an employee on investigative leave, the agency must provide written explanation that (1) describes the limitations of the leave placement, including the duration of leave; (2) includes notice that, at the conclusion of the period of investigative leave, the agency must take an action under paragraph (d) of this section; and (3) includes notice that placement on investigative leave for 70 workdays or more is considered a ''personnel action'' under the prohibited personnel practices provisions at 5 U.S.C. 2302(b)(8)–(9). These required items must be included in the written notice to the employee. Inclusion of anything beyond these items is at an agency's discretion.

Comment: An association recommended that the written determinations for investigative leave and notice leave detail the agency's rationale for imposing the leave to assist a potential review by the MSPB, the Office of Special Counsel, and others. Specifically, the association requested an amendment to proposed §§ 630.1504(c) and 630.1505(c) that agencies must, within the written explanation of leave to the employee, ''explain the rationale for the agency's determinations that the employee must be removed from the workplace based on the criteria in § 630.1503(b)(1) and that the options in § 630.1503(b)(2) are not appropriate.''

OPM response: Nothing precludes an agency from establishing a policy for such a practice. OPM declines to mandate such a requirement through regulation because, in some instances, prematurely disclosing certain information could negatively affect the integrity of the investigation.

Comment: An agency noted that section 6329b(b)(4)(A) provides for a written ''explanation'' of whether the employee was placed on investigative leave or notice leave and that the statute then details in the requirements of the explanation. The agency stated that the proposed rule suggests a greater agency burden regarding this explanation than what is required under the statute and suggested amending proposed § 630.1504(c) to include the words ''consisting of'' instead of ''must include.'' The agency also suggested amending proposed § 630.1505(c) in the same manner.

OPM response: The additional requirement that OPM added with respect to the written explanation was to notify the employee of the 70-workday threshold for treating placement on investigative leave as a ''personnel action'' under the prohibited personnel practices provisions in 5 U.S.C. 2302(b)(8)–(9). OPM determined that notice to the employee of this treatment was important since it was provided under the Act (section 6329b(g)). The other regulatory requirements for the written explanation for an employee placed on notice leave are consistent with statutory requirements. OPM merely clarified that the notice period defined the limitation on notice leave. OPM is making no changes based on these comments.

Comment: An individual stated it was unclear if the written explanation is required if an employee is placed on 10 days of administrative leave for investigative purposes.

OPM response: The written explanation required under § 630.1504(c) applies only when an employee is placed on investigative leave under section 6329b and subpart O. An employee cannot be placed on such investigative leave until the employee has reached the 10-workday annual limit on administrative leave for investigative purposes under section 6329a and subpart N.[48] Administrative leave for investigative purposes is not ''investigative leave'' that requires a written explanation. The regulations are clear in this regard, so OPM will make no changes based on this comment.

Section 630.1504(d)—Agency Actions Related to Investigative Leave

Comment: An agency and a union commented regarding proposed § 630.1504(d), which provides that not later than the day after the last day of an initial or extended period of investigative leave, an agency must take one of the following actions: return the employee to duty, take one or more of the actions under § 630.1503(b)(2), propose or initiate an adverse action against the employee, or extend the period of investigative leave. The agency noted that, pursuant to § 630.1505(a), notice leave cannot be initiated until *after* a notice of proposed adverse action is issued. The agency stated that § 630.1504(d) presumably requires an agency to leave the employee on investigative leave after the inquiry is completed to cover the employee's absence from the workplace during the process of reviewing the investigation and drafting any adverse action. The union asked if it is OPM's position that the agency should continue to carry an employee on investigative leave during the agency's various processes related to labor/employee relations, so long as the agency still believes the employee is a threat to the agency/systems/personnel/general public. The union stated that OPM should clarify if it would be proper for an agency to use investigative leave while it continues the labor/employee relations process after an investigation has been completed but before an adverse action has been proposed.

OPM response: It is correct that notice leave would not commence until the employee has received a notice of a proposed adverse action. As noted in the discussion of general comments with respect to the definition of ''investigation,'' OPM considers the investigation to include a variety of activities associated with the fact-finding stage, such as preparation of a report and/or recommendation(s). The investigation would also include settlement negotiations that could lead to a recommendation. In short, the investigation includes all of the steps leading to the agency's decision regarding whether to issue a notice of proposed action. If an agency is planning to issue a notice of proposed adverse action based on its investigation, the period of investigation may be viewed as not completed until the agency issues the notice. Thus, an agency can avoid any gap and provide for consecutive use of the two types of leave, where appropriate.

Section 630.1504(f)—Extensions of Investigative Leave

Comment: An agency recommended deleting the requirement that any extension of the initial 30 workdays of investigative leave must be approved by the CHCO or designee. The agency argued that this elevates the approval level too high within the chain of command unnecessarily. The agency believed that extensions of investigative leave should be approved by local commanders/directors.

OPM response: The requirement that extensions of investigative leave be approved by the CHCO or designee is a statutory requirement under section

[48] *See* section 6329b(b)(3)(A) and § 630.1504(a)(1).

6329b(c). OPM notes, though, that neither the Act nor final rule specify the appropriate level to which this function can be delegated and agency CHCOs have the discretion to make such a determination.

Comment: A union recommended that proposed § 630.1504(f)(3) be revised to include language included on page 32271 of the proposed regulations indicating that: (1) requests for extensions of investigative leave should be used sparingly, (2) approving officials should act in a timely manner on such extensions, and (3) agencies should not submit automatic requests for extension. The union also suggested that OPM clarify that the approving official (CHCO or designee) be required to consult *directly* with the investigator who is conducting the investigation, rather than the investigator's supervisor or some other person not closely familiar with the investigation.

OPM response: Since the statute and regulations establish a process for approving extensions in 30-workday increments, the referenced language does not need to be included in the regulatory text. The process compels timely action and requires the approving official to make a written determination that use of investigative leave is warranted with each extension (§ 630.1504(f)(3)(i)). This process also discourages ''automatic'' requests for extensions and promotes sparing but necessary use of investigative leave. The statutory and regulatory requirements to report on use of investigative leave also address these issues. With respect to the union's suggestion that an approving official consult directly with the investigator conducting the investigation, the regulatory language ''after consulting with the investigator responsible for conducting the investigation'' (§ 630.1504(f)(3)(ii)) is clear on its face, and is the exact language used in the statute (*see* section 6329b(c)(1)). OPM is making no changes based on these comments.

Section 630.1504(g)—Further Extensions of Investigative Leave

Comment: An agency recommended adding the word ''However'' at the start of the second sentence in proposed § 630.1504(g), regarding further extensions of investigative leave after an employee has reached the maximum number of extensions of investigative leave under paragraph (f)(2), to make clear that the first sentence is subject to the second sentence.

OPM response: OPM agrees and is revising § 630.1504(g) accordingly.

Comment: An agency noted that rare circumstances may require that an employee be removed from the workplace for more than 90 days and asked what the process would be for an extension of investigative leave in these situations, specifically, if the request would go to OPM. Further, the agency asked if there will be leniency for the ''crime provision.'' The agency stated that, while indefinite suspensions are an option, they are frequently not supported by the MSPB because the employee is only charged and not found guilty.

OPM response: Requests under § 630.1504(g) do not go to OPM. The so-called ''crime provision'' to which the agency refers is in chapter 75 of title 5, U.S. Code. It allows an agency to shorten the notice period of an adverse action where there is reasonable belief that the employee has committed a crime for which a sentence of imprisonment may be imposed.[49] The crime provision found at section 7513(b)(1) and § 752.404(d)(1) is applicable to notice leave under § 630.1503(b)(2)(iv) but not investigative leave. While notice leave is not subject to a time limit (other than the length of the notice period), notice requirements applicable to the particular action continue to apply.

Comment: A union expressed concern that agencies might ''tweak'' an investigation, such as by treating it as a new and different investigation, to circumvent the Congressional reporting requirements associated with further extensions of investigative leave under § 630.1504(g). The union recommended that OPM add a regulatory provision to bar such activity.

OPM response: OPM does not consider it is necessary to add a regulatory provision stating that agencies may not act inappropriately in administering investigative leave. OPM notes that there are various accountability and transparency measures built into the law and regulations, including written approvals by specified officials, recordkeeping requirements, reporting requirements, and GAO reviews. It is also possible for an employee to become subject to new investigations regarding separate matters, and it is not practical to establish precise rules regarding when an investigation should be treated as an entirely new or separate investigation for purposes of the investigative leave law and regulations. Agency officials are authorized to exercise their best judgment in the conduct of investigations and the approval of investigative leave.

[49] 5 U.S.C. 7513(b)(1).

Comment: Two agencies recommended that OPM clarify the reporting requirements regarding employees who are required to telework in lieu of investigative leave, as regulated in § 630.1504(g)(5), reflecting the statutory reporting requirement to Congress in section 6329b(d)(1)(E) regarding employees required to telework, triggered when an agency is approving a ''further'' extension of investigative leave under section 6329b(d). Both agencies noted that an employee is not on investigative leave while performing required telework and found it confusing that a further extension of investigative leave was being approved for an employee in required telework status under section 6502(c). Both agencies asked whether the report to Congress including information on telework referred to cases where the employee was teleworking at some point during an investigation and investigative leave.

OPM response: As explained above, an employee in required telework status is in work status, not investigative leave status. However, section 6502(c) states that an agency may require telework ''if an agency places an employee in investigative leave.'' In drafting the regulations, OPM interpreted this to mean that telework may be required only when the employee would *otherwise* be placed on investigative leave.[50] OPM has concluded that this interpretation reflects the best reading of the statute because a literal reading would have the effect of authorizing agencies to compel the performance of regular work notwithstanding an employee being in a defined leave status, which would be unworkable. In requiring reporting to Congress on telework for an employee who is being approved for a ''further'' extension of investigative leave, OPM believes that Congress did not intend to count required telework time as if it were investigative leave time. The purpose of the approval requirements and conditions associated with the initial and further extensions of investigative leave is to gather information and control the use of paid time off, not work time. OPM notes that it is possible that an employee would telework intermittently and thus have a mix of investigative leave and telework hours over an investigation period. The reporting requirements in section 6329b(d)(1)(E) and § 630.1504(g)(5) mean that an agency must report to Congress on the use of required

[50] *See* § 630.1503(c); see also discussion of this issue in our responses to comments on § 630.1503(c).

telework for the employee in question during the entire period of investigation prior to the further extension of investigative leave. OPM is revising § 630.1504(g)(5) to clarify this point.

Section 630.1504(i)—Possible Prohibited Personnel Action

Comment: With regard to proposed § 630.1504(i), an individual questioned whether 10 days of administrative leave for investigative purposes would be counted towards the 70-workday threshold that allows placement in investigative leave to be considered a ''personnel action'' under the prohibited personnel practices provisions at section 2302(b)(8)–(9).

OPM response: As explained above, an employee must be placed on 10 days of administrative leave for investigative purposes before an employee can be placed on investigative leave. Until and unless that period of administrative leave is exhausted, such leave is not investigative leave under section 6329b and does not count toward the 70-workday threshold in section 6329b(g) and § 630.1504(i).

Comment: An agency requested clarification regarding which entity would review an employee's claim that placement in investigative leave for 70 workdays or more qualified as a ''personnel action'' under the prohibited personnel practices provisions. The agency said that this information was needed because the regulations require that agencies include information about the 70-workday threshold in the initial notice to the employee regarding placement on investigative leave.

OPM response: Section 630.1504(c)(3) requires that agencies include information about the 70-workday threshold under § 630.1504(i) as part of the written explanation to an employee placed on investigative leave. Placement on investigative leave is not an adverse action and does not establish an independent basis for filing a complaint with the U.S. Office of Special Counsel (OSC) or an action directly appealable to the MSPB. Similarly, the regulatory provision does not create a mechanism for independent review for employees who are placed on investigative leave for 70 workdays or more. Rather, the provision permits OSC to determine that the *personnel action* required to nonfrivolously allege reprisal is satisfied if an employee has been on investigative leave for 70 or more workdays, and alleges reprisal based on protected disclosures (section 2302(b)(8)) or activity (section 2302(b)(9)). Further, because placement on investigative leave is not a personnel action directly appealable to the MSPB, employees must seek corrective action with OSC before filing an individual right of action appeal to the MSPB (section 1221). OPM plans to provide agencies with guidance regarding the language agencies should use in written explanations with respect to the 70-workday threshold.

Comment: An organization argued that proposed § 630.1504(i) was ''puzzling'' and largely ineffectual. It questioned why the 70-workday threshold applied only to investigative leave. The organization stated that the provision was ineffectual because, in the absence of an independent whistleblower claim, OSC would not have jurisdiction to act. For an employee subjected to excessive investigative leave because, for example, the employee was politically inconvenient or doing legitimate work that is potentially embarrassing to agency management, this provision offers no protection. The organization noted, though, that retaliatory investigations are already a prohibited personnel practice under the provision covering ''any other significant change in duties, responsibilities, or working conditions'' (section 2302(a)(2)(xi)).

OPM response: Section 630.1504(i) repeats the statutory language in section 6329b(g). The effect of the law is that the action to place an employee on investigative leave shall be considered a personnel action that could trigger application of prohibited personnel practices provisions in section 2302(b)(8) and (9) (which include prohibitions against retaliatory personnel actions) once the employee has been placed on investigative leave for 70 workdays or more.

Section 630.1505—Administration of Notice Leave

Comment: Fourteen commenters, including two agency representatives, expressed concern about an employee remaining in the workplace after receiving a notice of proposed removal if retaining the individual in the workplace created an unnecessary risk of workplace violence. They also expressed concern that allowing an employee to continue to report to the workplace after receiving a notice of proposed removal would otherwise be disruptive, unproductive, a waste of taxpayer dollars, or of no benefit to the agency. Twelve individual commenters and one agency maintained that proposed § 630.1505 should be revised to state that whenever an agency proposes the removal of an employee, it shall, or normally will, place the employee on notice leave.

OPM response: These regulations are based on statutory requirements. In accordance with statute, § 630.1503(b)(1) provides that notice leave may be used *only* when the agency makes the required determination, after consideration of the baseline factors identified in § 630.1503(e), that the employee must be removed from the workplace during a notice period to protect agency facilities or systems, the Federal workforce, or the public from harm. If, after consideration of the baseline factors and the consideration of other options, the agency determines that the continued presence of the employee in the workplace while in a notice period meets one or more of the criteria listed in § 630.1503(b)(1), the agency may place the employee on notice leave. Nothing in the regulation requires agencies to keep employees in the workplace if an agency determines, pursuant to these baseline factors, that an employee presents a workplace violence threat. Notice leave is approved at the agency's discretion (subject to statutory and regulatory requirements)—it does not create a new entitlement. We note that all the commenters suggested limiting the regulation to the context of an employee's removal or termination from Federal service. However, the statute, and therefore this regulation, does not make a distinction among the types of adverse actions. The procedural requirements will be applied consistently to all adverse actions.

Comment: Eleven commenters, including one agency representative, recommended that the regulatory language include a directive that the authority for approving notice leave be delegated to the lowest reasonable level within the agency so that frontline managers are empowered to protect the Federal workplace once an employee's removal has been proposed. An individual suggested that, because extensions of investigative leave have specific requirements for levels of approval, the level of approval for initial placement on administrative leave and investigative leave should likewise be clarified in the regulation.

OPM response: This regulation does not prohibit agencies from delegating the authority for approving notice leave to the lowest reasonable level within the agency. Although there are required approval levels regarding administrative leave (§§ 630.1402 (definition of ''agency'') and 630.1403), and extensions of investigative leave (§ 630.1504(f) and (g)), there are no such requirements regarding notice leave. Agencies have the discretion to establish the appropriate authority level

for granting notice leave within their organizations.

Comment: Six individuals referenced the Civil Service Reform Act of 1978 and Congressional intent regarding the notice period for employees who have received a notice of proposed removal, and one individual asserted that the proposed regulations are detrimental to the efficiency of the service, a key component of the disciplinary system.

OPM response: These comments are outside the scope of these regulations because Congress has imposed these requirements in the Administrative Leave Act notwithstanding the provisions of the Civil Service Reform Act. Nonetheless, we do not see an inconsistency. The relevant portion of the Civil Service Reform Act, implemented in § 752.404(b)(3), states: ''Under ordinary circumstances, an employee whose removal or suspension, including indefinite suspension, has been proposed will remain in a duty status in his or her regular position during the advance notice period. In those rare circumstances where the agency determines that the employee's continued presence in the workplace during the notice period may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, the agency may elect one or a combination of the following alternatives: . . . (iv) Placing the employee in a paid, nonduty status for such time as necessary to effect the action.'' The regulation in § 630.1503 does not supersede or conflict with this regulation. Rather it identifies baseline factors that the agency must consider in making this determination. Regarding the assertion that the proposed regulations are detrimental to the efficiency of the service, OPM disagrees and notes that the Act requires an agency to make this formal determination before it may place the employee on notice leave. We also note that the efficiency of the service remains the standard applied in any underlying adverse action proceedings (§§ 752.202 and 752.403). The duty or leave status of the employee during the notice period of an adverse action is irrelevant to whether the efficiency of the service standard has been met for purposes of an adverse action.

Comment: Ten individuals stated that the proposed regulations are overly bureaucratic, narrowly written, or otherwise make it exceedingly difficult to take an employee out of the workplace pending a decision on a notice of proposed adverse action. Some of the individuals asserted that the proposed regulations will result in managers being reluctant to take action against poor performance or employees who have engaged in misconduct.

OPM response: The regulations in § 630.1503 are based on statutory requirements. In accordance with statute, § 630.1503(b)(1) provides that notice leave may be used *only* when the agency makes the required determination, using the baseline factors identified in § 630.1503(e), that the employee must be removed from the workplace during a notice period to protect agency facilities or systems, the Federal workforce, or the public from harm. These regulations have been written in accordance with the requirements of the law.

Comment: An association commented that the proposed regulations, as they relate to notice leave, will not carry out the intent of Congress because there are no limitations to curb the ''ongoing abuses'' of leave. While the association acknowledged that a period of notice leave ends on the effective date of the adverse action or on the date on which the agency notifies the employee that no adverse action will be taken, the association argued that ''unlimited'' notice leave would allow agencies to issue an ''unjustifiable removal proposal followed by imposing indefinite leave'' allowing the agency to ''disappear the targeted employee without an ounce of due process or procedural protection.'' The association stated that the proposed regulations on notice leave rely upon ''agency self-policing.''

OPM response: This comment is outside the scope of these regulations. OPM notes, though, that the statutory provisions in chapter 75, and the procedural requirements for proposing and taking an adverse action against an employee regulated in part 752, do not require a decision within a specified period of time. The provisions of the Act and this final rule do not change the procedural requirements in part 752. Further, placement of employees on paid leave does not deprive them of a property interest so the due process is not implicated. The regulations in subpart O are in accordance with the requirements of law and reflect the intent of Congress. Additionally, § 630.1506 requires that an agency maintain an accurate record of the placement of an employee on investigative leave or notice leave, including the reasons for the authorization of notice leave (including the alleged employee action(s) that necessitated the issuance of a notice of a proposed adverse action), the basis for the determination made under § 630.1503(b)(1), an explanation why an action under § 630.1503(b)(2) was not appropriate, the length of the period of notice leave, and the amount of salary paid to the employee during the period of leave. An agency must make these records available upon request to any committee of jurisdiction, to OPM, to GAO, and as otherwise required by law. Agencies must also provide information to the GAO, which is required under section 1138(d)(2) of Public Law 114–328 to submit reports to specified Congressional committees on a 5-year cycle. Accordingly, there are mechanisms to ensure agency accountability for placing employees on notice leave.

Comment: An agency stated that proposed 630.1505(a) refers to notice leave upon a proposed adverse action but other provisions also refer to ''disciplinary actions.'' The agency argued that a distinction between adverse actions and disciplinary actions is not drawn in the underlying statute or regulations concerning adverse actions.

OPM response: By law, notice leave is linked to issuance of a notice of proposed adverse action (section 6329b(a)(8)). The regulatory definition of the term *investigation,* which is used in conjunction with investigative leave, encompasses the investigation of matters that could lead to appealable adverse actions or to non-appealable adverse actions, which we described as ''disciplinary actions'' (§ 630.1502) in the NPRM. To clarify, OPM is adopting a definition of *investigation* at § 630.1502 that specifies that the regulation is intended to cover a variety of inquiries that could result in any type of action adverse to the employee and removes the phrase ''disciplinary actions.''

Comment: An agency referenced proposed § 630.1505(b) which states, ''The placement of an employee on notice leave shall be for a period *not longer than the duration of the notice period.*'' (Emphasis added by the commenter). The agency interpreted this to mean that the notice period was limited to 30 days. The agency argued that they routinely arrange for short extensions to the notice period to accommodate requests from employees' counsel, to arrange for settlement agreements, or facilitate retirement/resignation effective dates, and that there is no provision for extending the notice period in the proposed regulations.

OPM response: This final rule does not limit a notice period to 30 days. As stated in § 630.1502, *notice period* means ''a period beginning on the date on which an employee is provided

notice, as required under law, of a proposed adverse action against the employee and ending—(1) On the effective date of the adverse action; or (2) On the date on which the agency notifies the employee that no adverse action will be taken.'' Because there is no such limit, there is no need (or provision) for extension of the notice period. In fact, 5 U.S.C. chapter 75 and 5 CFR part 752 establish a floor, not a ceiling, for the notice period relating to an adverse action.

Comment: An agency noted that there were no proposed regulations on extensions of an employee's notice period and asked if an unlimited amount of time could be granted. The agency also asked if the 70-workday threshold in § 630.1504(i) applied to the notice period.

OPM response: Section 6329b did not establish approval and reporting requirements for extensions of notice leave. Notice leave may be granted only during the ''notice period,'' as defined in § 630.1502. As explained above, the notice period ends on (1) the effective date of an adverse action or (2) the date on which the agency notifies the employee that no adverse action will be taken. Consistent with section 6329b(g), the 70-workday threshold in § 630.1504(i) applies only to investigative leave (*i.e.,* only workdays of investigative leave count towards this threshold).

Section 630.1506—Records and Reporting

Comment: An agency recommended that proposed § 630.1506 be revised to clarify the length of time records need to be maintained.

OPM response: The recordkeeping requirements in § 630.1506 are based on the statutory requirements in section 6329b(f), which did not specify a length of time for maintaining these specific records. In this final rule, OPM is specifying a minimum retention period of 6 years for records on investigative leave and notice leave at § 630.1506(b)(3). We are also specifying a minimum retention period of 6 years for records on administrative leave under subpart N at § 630.1406(b).

Comment: Three unions referenced the requirement in proposed § 630.1506(b)(2), that any action to make a record available regarding use of investigative leave or notice leave is subject to other applicable laws, Executive orders, and regulations governing the dissemination of sensitive information related to national security, foreign relations, or law enforcement matters. The unions asserted that the Privacy Act (section 552a) should be included in the list of statutes to which the leave records under discussion are subject so that agencies are cognizant of their obligations in this area.

OPM response: OPM agrees that the Privacy Act (section 552a) is an ''applicable law'' under the provision and that disclosures of sensitive information are subject to that Act but do not believe it is necessary to provide a list of applicable laws in the regulatory text. We note, also, that a general exemption from the Privacy Act applies to the disclosure of information to Congress or GAO (section 552a(b)(9)–(10)), which are two of the entities to which agencies must make records on investigative leave and notice leave available (§ 630.1506(b)).

Comment: Two unions expressed concern that agencies might record sensitive information regarding the reasons why an employee was placed on investigative leave and that this information might be released inappropriately within or outside the agency because of the recordkeeping requirements in § 630.1506. The unions were particularly concerned that there would be a written record of investigative leave even if an employee is found to be innocent following an investigation.

OPM response: The recordkeeping requirements in § 630.1506 are based on statutory requirements in section 6329b(f). Congress made no allowance in the Administrative Leave Act for deleting records on investigative leave when the investigation of an employee does not lead to a disciplinary or adverse action. However, agencies are subject to the applicable laws and rules governing the handling of sensitive information and personnel records, including the Privacy Act (section 552a). Section 630.1506(b)(2) specifically states that agencies are subject to laws, Executive orders, and regulations governing the handling of sensitive information related to national security, foreign relations, or law enforcement matters. If issues arise about the handling of sensitive information, the relevant agency should consult with agency counsel. OPM may choose to address the matter in guidance.

Comment: An individual recommended deleting proposed § 630.1506(a)(9), which provides that agencies must keep records on ''any additional information OPM may require.'' A union stated that any additional requirements should be specified in the regulation.

OPM response: OPM disagrees with this recommendation. Under section 6329b(f)(1), Congress indicated that agencies must retain records regarding investigative leave and notice leave and included specific items for retention. However, the list of items is not exhaustive (see section 6329b(f)(1)—''including'' certain items for retention). This language indicates that Congress anticipated the possibility of additional information being kept in the records. While OPM has not identified additional information that is needed at this time, OPM may require additional information under § 630.1506(a)(9) pursuant to its authority under Civil Service Rules V and X (5 CFR parts 5 and 10) to protect or promote the efficiency of the Government and the integrity of the competitive service and to ensure consistent application of the merit system principles.[51]

Subpart O—Miscellaneous Comments

Comment: An agency asked if employees on investigative leave and/or notice leave are subject to ''monitoring & calling.'' The agency stated that it is their practice to require an employee to be available for contact by phone during any period of administrative leave in conjunction with an investigation or notice period. The agency requested that this matter be addressed in the regulations.

OPM response: Matters such as this are within the agency's discretion to address within their implementing policy on investigative leave and notice leave. As addressed in § 630.1503(d), an employee on investigative leave or notice leave must be prepared to report promptly to work.

Comment: An agency asserted that, if an employee continues performing the same/similar duties while required to telework, it could negatively impact the agency's claim to have a ''lack of confidence/trust'' in the employee, which is a critical ''Douglas'' factor in adverse action cases.

OPM response: Section 630.1503(c) describes the alternative of an agency requiring an employee to telework in lieu of being placed on investigative leave. While the law requires agencies to consider certain options before approving use of investigative leave (section 6329b(b)(2)), the law does not require agencies to consider the telework option (section 6502(c)). An agency has discretion in deciding whether it will require telework by an employee who would otherwise be placed in investigative leave, subject to the conditions set forth in law and regulation. As stated in

[51] *See, e.g.,* §§ 351.803(c)(3) and 550.1615(e)(1)(viii) and (2)(viii) for OPM's use of this authority in other contexts.

§ 630.1503(c)(1)(i), before an agency requires telework, it must determine that it would not pose certain risks to Government personnel, property, or other interests. After applying these conditions, the agency still has the discretion to not require telework if it determines it would be inappropriate (§ 630.1503(c)(1)(iv)).

Comment: An association stated that restrictions of the type included in the proposed rule will help avoid unnecessary stigmatization of employees facing proposed adverse actions. The association supports allowing notice leave to continue as long as needed to allow for a thorough review and reasoned decision regarding a proposed adverse action and opposes artificial limits on the notice period. The association supported the approach of limiting notice leave to chapter 75 adverse actions and cited language from the preamble of the proposed regulations, which stated, ''An employee who has not received an advance notice of proposed adverse action under 5 CFR chapter [sic] 752 may not be provided notice leave'' (82 FR 32267). The association requested that OPM explicitly incorporate that restriction into § 630.1503. The association believed that the policy reasons governing legitimate use of notice leave, as listed in § 630.1503(b)(1)(i)–(iv), in practice apply only to chapter 75 adverse actions, and that the types of situations where actions that could be adverse in a more generic sense can be proposed under other legal authorities (*e.g.,* chapter 43 performance actions and part 731 suitability actions) would rarely meet the requirements of § 630.1503(b)(1)(i)–(iv). The association stated that, to avoid possible redundancy between proposed § 630.1503(a)(2)(i) and § 630.1503(a)(2)(ii), and to effectuate the policy goals, the two provisions should be consolidated and revised. Specifically, the association suggested that proposed § 630.1503(a)(2) should be revised in relevant part to read as follows: ''(2) Notice leave: (i) If the agency proposes or initiates an adverse action against the employee under 5 CFR part 752 or directly analogous misconduct-based adverse action authorities; and (ii) The agency determines that the employee continues to meet one or more of the criteria described in paragraph (b)(1) of this section.'' To make clear that reference to part 752 is not exclusive, OPM amends the definition of *Investigation* at § 630.1502 to include an ''employee's compliance with or adherence to security requirements including eligibility to hold a position that is national security sensitive under E.O. 13467, eligibility for access to classified information under E.O. 12968, as amended, and standards issued by the Office of the Director of National Intelligence (ODNI).''

OPM response: OPM declines to make the suggested change. Although we recognize that ''adverse action'' can be a term of art, referring to actions pursuant to chapter 75, the part of the preamble quoted by the association goes on to state, ''Section 630.1503(a)(2)(ii) authorizes notice leave, following a placement of an employee on investigative leave, which may be provided after the last day of the period of investigative leave if the agency proposes an adverse action against the employee under 5 CFR [part] 752 *or similar authority.*'' OPM notes that neither the statute nor the regulation limits notice leave to adverse actions taken under the procedures of chapter 75. Rather, coverage extends to other actions taken under other authorities that can result in outcomes adverse to the employee—such as removal, demotion, or suspension—following a period of notice. The sentence in the proposed rule referring to part 752 was also intended to cover actions under these other authorities. To make clear that reference to part 752 is not exclusive, OPM amends the definition of *Investigation* at 630.1502 to include an ''employee's compliance with or adherence to security requirements including eligibility to hold a position that is national security sensitive under E.O. 13467, eligibility for access to classified information under E.O. 12968, as amended, and standards issued by the Office of the Director of National Intelligence (ODNI).'' As to the issue of redundancy between § 630.1503(a)(2)(i) and § 630.1503(a)(2)(ii), the regulations parallel the statutory language in section 6329b(b)(1). The provisions in section 6329b(b)(1)(C) and § 630.1503(a)(2)(ii) clarify the circumstances under which notice leave may immediately follow investigative leave.

Comment: An agency asked how investigative leave will affect the use of indefinite suspensions. The agency asked if investigative leave should replace indefinite suspensions as a tool available to agencies where there is cause to believe a crime has been committed for which imprisonment may be imposed. The agency believed part 752 requires clarification regarding investigative leave, use of indefinite suspensions, and the impact of the crime provision. The agency stated that the use of administrative leave is limited to 10 days and asked if agencies are also limited to 10 days for investigative leave. Additionally, the agency asked about time limitations and approval requirements for extensions related to investigative leave and notice leave.

OPM response: OPM does not agree that the use of indefinite suspensions and the crime provision are impacted by this rule. Agencies may still use existing authorities to levy indefinite suspensions and utilize the crime provision to shorten the advance notice period. Also, the question of whether an agency should use investigative leave in lieu of imposing an indefinite suspension runs contrary to the intent of the Administrative Leave Act. Congress expressed concern over the use of extensive paid, non-duty time as a substitute for taking appropriate disciplinary action. To use investigative leave in such a manner, as questioned by the agency, would not find support in the law or these regulations.

Additionally, the application of administrative leave for 10 workdays is covered in § 630.1604(a). The duration of investigative leave is addressed in this rule at § 630.1504(b), and extensions and further extensions of investigative leave are addressed in § 630.1504(f) and (g), respectively. Unlike investigative leave, there are no extensions regarding notice leave as the duration can be as long as the notice period. The requirements and duration of notice leave are addressed in this rule at § 630.1505.

Amendments to §§ 752.404(b)(3) and 752.604(b)(2)

Comment: An agency asked whether OPM plans to amend its chapter 75 regulations (either separately or with these regulations) to provide more detail regarding notice periods and extensions relating to investigative leave. A different agency stated that the use of investigative leave and notice leave impacts OPM's regulations found in part 752, which relate to disciplinary and adverse actions, and asked if OPM plans to amend §§ 752.404 and 752.604. The agency asserted that, unless these sections are amended, there will be two separate parts of the CFR in conflict.

OPM response: To conform part 752 to the notice leave provisions in section 6329b and subpart O, OPM will amend the related regulations in §§ 752.404 and 752.604. Specifically, we will revise §§ 752.404(b)(3)(iv) and 752.604(b)(2)(iv) to explain that an agency may place an employee in notice leave status for no longer than the duration of the notice period if the criteria in § 630.1503(b) are met.

We note that investigative leave is inapplicable to part 752 as the adverse action regulations relate to procedures that occur after an agency's investigation is complete. Further, OPM does not agree that our amendments to part 630 conflict with part 752. The adverse action regulations at §§ 752.404(b)(3)(iv) and 752.604(b)(2)(iv) refer to placing employees in ''paid, nonduty status'' during a notice period. This paid, nonduty status would be approved in the form of notice leave under subpart O.

Miscellaneous Comments Regarding § 251.202(a)(3)

Comment: Two management associations expressed general support for the proposed regulations but questioned how the regulations would affect an OPM regulation in part 251 dealing with use of excused absence for employees who attend meetings of a professional association from which an agency could derive some benefits (§ 251.202(a)(3)). In particular, the associations expressed concern that any administrative leave granted under the new subpart N for such meetings would be subject to the 10-workday calendar year limitation. One association asserted that the Administrative Leave Act specified a 10-day limit only for investigative leave. Both associations stated that the new regulation is not in line with the intent of the Act and could have an unintended consequence of limiting the ability for professional associations to meet with their respective agency leaders. The associations requested that OPM revise the regulations to exclude time in professional management association meetings from counting towards the 10-workday calendar year limit on administrative leave. The management associations also questioned how the proposed regulations would affect other subsections of part 251, such as § 251.202(a)(2), the provision authorizing pay to employees who attend professional organization meetings when such attendance is for the purpose of employee development or directly concerned with agency functions or activities and the agency can derive benefits from employee attendance at such meetings.

OPM response: First, as explained above, the 10-workday annual limit in section 6329a applies to administrative leave for investigative purposes so it would not apply to the meetings at issue in these comments.

In response to the other parts of this comment, OPM analyzed the part 251 regulation cited by the management associations and related laws. Section 251.202(a)(2) states that, using the authority in sections 4109 and 4110, as implemented by OPM regulations in part 410, an agency may pay expenses of employees to attend professional organization ''meetings'' when such attendance is ''for the purpose of employee development or directly concerned with agency functions or activities and the agency can derive benefits from employee attendance at such meetings.'' This paragraph (a)(2) does not expressly address whether an agency may provide an employee with the employee's regular pay during such attendance—*i.e.,* treat the time as compensable work time. However, the referenced section 4109 in the training law authorizes agencies to pay all or a part of an employee's pay (except overtime, holiday, or night differential pay) for a period of ''training under this chapter'' (*i.e.,* chapter 41).[52] Note that this is separate from the authority to pay for necessary training expenses under section 4109(a)(2). The referenced section 4110 is a special authority in the training law permitting agencies to pay for travel expenses for ''meetings'' that are ''concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities.'' Section 410.404 of OPM's training regulations specifically addresses attendance at a ''conference'' as a ''developmental assignment'' under section 4110 and describes how conference attendance can meet the definition of ''training'' in section 4101. Former Federal Personnel Manual (FPM) guidance addressed section 4110 and spoke of ''authorizing attendance at meetings without charge to leave,'' but did not specifically refer to use of excused absence or administrative leave.[53]

OPM understands that some agencies have adopted policies under which administrative leave has been used to provide pay during employees' attendance at meetings of the type that are covered by section 4110. However, OPM concludes that the authority in section 4109(a)(1) to provide all or a part of an employee's pay during a period of training under chapter 41 applies to the special category of ''training'' associated with attendance at meetings covered by section 4110. In other words, time spent attending meetings covered by section 4110 may be treated as the equivalent of regular work time—not administrative leave—to the extent an agency uses the authority in section 4109(a)(1) to provide pay for the meeting time. OPM notes that, even if an agency decides not to pay travel expenses for a meeting covered by section 4110, it would still be a covered meeting for purposes of providing pay under section 4109(a)(1). Administrative leave would be an issue only if a meeting or conference was determined not to meet the requirements under section 4110 or if an agency decided not to provide pay for the meeting time under section 4109(a)(1).[54]

OPM did not propose any regulatory changes regarding part 251 and does not believe that any changes are necessary at this time.

V. Regulatory Analysis

A. Statement of Need

OPM is issuing this final rule to implement the administrative leave, investigative leave, and notice leave provisions of the Administrative Leave Act of 2016. The Act created these new categories of paid leave in chapter 63 of title 5, U.S. Code, specifically at section 6329a regarding administrative leave and at section 6329b regarding investigative leave and notice leave. The Act directed OPM to prescribe implementing regulations to carry out these sections including by providing guidance to agencies regarding acceptable uses for and proper recording of these leave categories.

As explained above in the ''Background'' section, in drafting the Administrative Leave Act, Congress considered an October 2014 report entitled ''Federal Paid Administrative Leave,'' prepared by the GAO.[55] GAO found that agency policies on administrative leave varied and that some employees were on administrative leave for long periods of time, which had significant cost implications. GAO concluded that ''Federal agencies have the discretion to grant paid administrative leave to employees to help manage their workforces when it is in their best interest to do so,'' but that administrative leave should be managed effectively since it is a cost to the taxpayer. Congress extensively cited the GAO report and its findings in 2016 House and Senate committee reports on

[52] *See* section 4109(a)(1).

[53] *See* subchapter 8 of FPM chapter 410.

[54] OPM also notes that, for FLSA-nonexempt employees, training time must be treated as compensable hours of work if the training time meets the hours-of-work conditions in either title 5 or the FLSA. *See* 5 CFR 410.402, 551.401(f)–(g), and 551.423.

[55] *See* Gov't Accountability Off., ''Federal Paid Administrative Leave,'' Oct. 2014, at *https://www.gao.gov/assets/gao-15-79.pdf.*

draft bills that eventually became the Administrative Leave Act.[56]

In the sense of Congress provisions in section 1138(b) of the Act, Congress reiterated the need for legislation to address concerns that usage of administrative leave had sometimes exceeded reasonable amounts and resulted in significant costs to the Government. Congress wanted agencies to (1) use administrative leave sparingly and reasonably, (2) consider alternatives to use of administrative leave when employees are under investigation, and (3) act expeditiously to conclude investigations and either return the employee to duty or take an appropriate personnel action. Congress also wanted agencies to keep accurate records regarding the use of these leave categories.

This rulemaking is necessary for OPM to meet its obligations under the Administrative Leave Act to carry out sections 6329a and 6329b. OPM is therefore prescribing acceptable uses and proper recording of administrative leave, as well as regulations regarding acceptable uses, proper recording, reporting, baseline factors agencies must consider, and procedures for the approval and the extensions of investigative leave and notice leave. Without this rulemaking, OPM would not meet its statutory obligations under the Act and agencies would lack the necessary guidance regarding how to meet their own obligations under the Act.

In addition to the statutory charge, it is OPM's policy that paid leave should be effectively managed and it believes this final rule accomplishes this while addressing Congress' concerns that led to the enactment of the Administrative Leave Act. OPM also does this while preserving agency discretion to tailor policies to their workforces and without unduly burdening those Federal agencies.

B. Consideration of Regulatory Alternatives

As explained in the previous section, the changes reflected in OPM's regulations for administrative leave, investigative leave, and notice leave are required by statute and reflect OPM's policies regarding paid leave. OPM did not have the option to not regulate—the Act requires OPM to prescribe regulations to carry out sections 6329a and 6329b and guide agencies regarding these new leave categories. We have prescribed regulations that accomplish this while striving to limit the burden placed on agencies.

This final rule establishes requirements regarding (1) the acceptable uses of administrative, investigative, and notice leave, (2) the proper recording of administrative, investigative, and notice leave, (3) baseline factors that an agency must consider when making a determination that investigative or notice leave should be used because the continued presence of an employee in the workplace may pose a threat to the employee or others, result in the destruction of evidence relevant to an investigation, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests, and (4) procedures and criteria for the approval of an extension of an investigative leave period. Additionally, the rulemaking provides the procedure for reassessing an employee's return to duty, at the discretion of the agency. The regulations also set forth reporting requirements as an additional agency responsibility.

Regarding administrative leave under section 6329a, OPM chose to prescribe regulations at subpart N that track policies and procedures familiar to agencies rather than impose novel factors and criteria. OPM considered the possibility of identifying specific situations in which use of administrative leave would be prohibited even when use of administrative leave in those situations would be allowed based on the general principles in the regulations. Ultimately, we determined that it was generally not practical or desirable to prescribe a long list of specific prohibited uses. Thus, this final rule preserves broad discretion under a set of guiding principles under which agency heads have operated for many years, which allows them to consider all facts and circumstances of any given situation rather than applying inflexible requirements. We have added a list of decision factors in § 630.1403(a)(6) to help agencies in making policy and approval decisions regarding administrative leave.

Regarding investigative leave and notice leave under section 6329b, the focus of the 2014 GAO report and of Congress when it enacted the Administrative Leave Act, OPM chose to prescribe regulations that track the requirements in the statutory language in section 6329b. Unlike administrative leave in section 6329a, Congress outlined detailed requirements on the appropriate use of investigative leave and notice leave in section 6329b. Since Congress provided these comprehensive requirements, OPM has concluded additional factors or criteria are not necessary regarding the use of investigative and notice leave. To the extent any remaining matters are not addressed in this final rule, OPM believes it is appropriate for each agency to exercise their discretion to develop policies appropriate for their unique missions and requirements.

Finally, commenters suggested several revisions and alternatives to the proposed regulations. While addressing them in this final rule, OPM determined that some of them were beyond the scope of this rulemaking or not within OPM's rulemaking authority, whereas others were within the scope and OPM's rulemaking authority. The reasons OPM decided to adopt or not adopt changes proposed by commenters to specific regulatory provisions are explained above in the section on ''Regulatory Amendments and Related Comments.''

C. Impact

This rulemaking conforms OPM's regulations to the statutory requirements for administrative leave, investigative leave, and notice leave, and prescribes the proper uses of these leave categories and the recordkeeping and reporting requirements with which agencies must comply across the Federal Government.

With respect to administrative leave under section 6329a, the issued regulations are consistent with longstanding policies and practices. The general principles in § 630.1403(a) are the same general principles found in longstanding OPM guidance on administrative leave.[57] We do not expect that overall agency use of administrative leave will change in ways unfamiliar to agencies. In some cases, since the principles now have a regulatory basis and usage reporting will be required, agencies may act more prudently in approving some uses of administrative leave. The requirement for agencies to adopt formal policies (starting with the agency head) and to record and report on uses of administrative leave will impose new administrative burdens but will improve transparency and accountability.

These regulations also outline the required determinations that an agency must conduct, in its discretion, to place an employee on investigative leave or notice leave, under section 6329b, and requirements for the duration of that leave. After consideration of the

[56] *See* House Report 114–520, (Aug. 25, 2016), accompanying H.R. 4359, at *https://www.govinfo.gov/content/pkg/CRPT-114hrpt520/html/CRPT-114hrpt520.htm;* Senate Report 114–292, (July 6, 2016), accompanying S. 2450, at *https://www.govinfo.gov/content/pkg/CRPT-114srpt292/html/CRPT-114srpt292.htm.*

[57] *See* OPM fact sheet at *https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/administrative-leave/.*

baseline factors set out at § 630.1503(e) the agency is required to determine that the continued presence of the employee in the workplace during an investigation of the employee or while the employee is in a notice period, as applicable, may pose a threat or otherwise jeopardize Government interests as enumerated in the regulations. Before using investigative leave or notice leave, an agency must consider and determine that the options described in the regulations are inappropriate. The options are: assignment of the employee to duties in which the employee no longer poses a threat, allowing the employee to voluntarily take leave or paid time off, carrying the employee in absent without leave status if the employee is absent from duty without approval; and, for an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed. We believe that agencies have the requisite knowledge, skills, and resources to make these assessments and determinations, which are similar to evaluations agencies currently must use in other contexts. For example, pursuant to § 752.404, agencies currently assess whether an employee should remain in a duty status, be allowed to use leave, or be placed in a paid, non-duty status during a notice period. OPM believes that assessments for placing an employee on investigative leave or notice leave and for any extensions of investigative leave will be minimally burdensome on agencies.

This final rule also requires agencies to make the same type of assessments about an employee's work status that they make now and, therefore, does not require significant investment in new tools or resources. This final rule provides that an employee may be returned to duty at any time if the agency reassesses its determination to place the employee on investigative leave or notice leave, or to require the employee to telework in lieu of placing the employee investigative leave. An employee on investigative leave or notice leave must also be prepared to report promptly to work. The regulations stipulate these decisions are at the discretion of the agency. Agencies make similar assessments now and, therefore, we do not view these regulations as requiring significant new tools or resources.

Finally, this final rule will enable the Federal Government to track these leave categories more accurately. Agencies must keep separate records on these leave categories. Agencies and payroll service providers currently have systems for recording and tracking leave usage that will need to be updated to account for the new leave categories. This new, more reliable data will better inform any further efforts by Congress, OPM, or agencies to modify these leave requirements and policies. The ongoing burden should be minimal when this final rule is effective, and the procedures are adopted at each agency.

The 2014 GAO report found various issues with the available data on use of administrative leave. In some cases, agencies were reporting holiday paid time off under the Administrative Leave-General category. GAO also identified instances where agencies incorrectly recorded duty time or another type of paid leave in the catchall administrative leave category. Based on available payroll data, after excluding holiday paid time off, GAO found that the average value of the administrative leave was less than 0.61 percent of the total basic salary costs. That would equate to an average of about 1.6 days of leave per year per employee. Today 0.61 percent of total basic salary costs for all full-time and part-time Federal employees in the OPM Governmentwide database would be roughly $1.4 billion for one year, including the cost of weather and safety leave.[58] Even in the absence of reliable payroll data regarding administrative leave, investigative leave, and notice leave, we believe it is reasonable to conclude that usage of these leave categories will change since the regulations detail their acceptable uses and proper reporting, limit the use of investigative leave, and prescribe and give effect to significant accountability and transparency measures built into the Administrative Leave Act, including written approvals by specified agency officials, recordkeeping requirements, reporting requirements, and GAO reviews.

D. Costs

For purposes of conducting a regulatory analysis, costs are measured against a no-action baseline—*i.e.,* the new costs generated by a regulation compared to the absence of the regulation. In the absence of this regulation, agencies would continue granting and recording paid time off in the way the 2014 GAO report and Congress deemed in need of reform. The Administrative Leave Act provided specific statutory authority for types of leave that have been granted under other authorities for many years. The law and regulations will now require application of new administrative requirements and procedures, new recordkeeping and reporting requirements, and the drafting of new agency policy and procedures documents (including authority delegations) that implement the new requirements.

Agencies will incur some administrative costs to implement the requirements of this final rule. The rule will affect the operations of approximately 120 Federal agencies, ranging from cabinet-level departments to small independent agencies. To comply with these regulatory changes, the affected agencies will need to update their policies, procedures, and data systems, including timekeeping systems within 270 days of the publication. For this cost analysis, the assumed average salary rate of Federal employees performing this work is the 2024 rate for GS–14, step 5, from the Washington, DC, locality pay table ($157,982 annual locality rate and $75.70 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $151.40 per hour. We estimate that, in the first year following publication of the final rule, this will require an average of 160 hours of work by employees with an average hourly cost of $151.40. This would result in estimated costs in the first year of implementation of about $24,224 per agency, and about $2.9 million in total Governmentwide. In subsequent years, the administrative costs associated with this rule will be folded into agencies' routine costs for leave administration.

Because this rule creates three new leave categories, the total estimated costs of these leave categories, per year, provide information about the no-action baseline from which the costs of this rule can be compared.

Before estimating the costs of administrative leave, investigative leave, and notice leave, it is important to note that OPM made several assumptions and considered certain limitations in these calculations. When administrative leave under subpart N is used for investigative purposes, the agency must exhaust the 10-workday limit before using investigative leave under the new subpart O. Therefore, for this cost analysis OPM assumes that the full 10 workdays will be used. Moreover, because OPM's regulations allow the consecutive use of administrative leave for investigative purposes, investigative

[58] At the time of the GAO study, the catchall administrative leave category included leave that is now covered by the weather and safety leave authority.

leave, and notice leave, we assume use of all three leave categories leading up to the adverse actions in this cost estimate. We understand that there will be instances when an employee is placed on investigative leave and no adverse action results from the investigation. However, we think it is instructive to consider the potential cost of consecutive use of administrative, investigative, and notice leave.

While OPM does not have reliable data that agencies have used administrative leave for every case that could result in an adverse action, we are assuming that agencies will use administrative leave for investigative purposes under subpart N and investigative leave under subpart O for all adverse actions taken in this cost analysis for the purpose of calculating the potential scope of expenses. OPM assumes that agencies will try to limit use of investigative leave to 30 workdays, as envisioned by § 630.1504(b). OPM understands that agencies may decide to use alternatives to investigative leave such as placing the employee on telework or a detail or relocating the employee temporarily to a different worksite. Also, we accept that there are other factors that could lead to shorter and longer periods of investigative leave. Employees may resign, retire, or transfer to another Federal agency after an investigation begins, which could shorten an investigation. Further, there may be delays in the investigative process, such as difficulty contacting witnesses, that lengthen an investigative period.

As for notice leave, the estimates in this regulatory impact analysis are also difficult to quantify and based on some assumptions. OPM does not have data regarding the length of notice periods. We assume that agencies will use the full 30-calendar day advance notice period minimally required for appealable adverse actions taken under 5 CFR part 752, subpart D. Also, if the agency proposes an employee's removal or if the charged misconduct is egregious in nature, it is reasonable to assume that the agency will move expeditiously to bring the action to closure at the end of the 30-calendar day advance notice period. For non-appealable adverse actions, OPM assumes a one-calendar day advance notice period, as minimally required by 5 CFR part 752, subpart B. Neither the Administrative Leave Act nor this final rule limit notice leave to adverse actions taken under the procedures of chapter 75. Thus, we understand that an agency may take an adverse action under an authority that allows for a different advance notice period. We also accept that an agency policy or collective bargaining agreement may require a longer minimum notice period for non-appealable adverse actions. As noted for investigative leave, there are other factors that could impact the duration of notice leave.

For the cost estimate of these three leave categories, as described in the previous section, OPM considered GAO data to estimate annual costs of $1.4 billion.[59] Even before this final rule, Federal employees used, and agencies put employees on, paid leave called ''administrative leave.'' But this rule now gives effect to ''administrative leave'' under the Administrative Leave Act and other leave categories described herein. OPM believes it would be beneficial to also isolate the estimated costs of more specific categories of paid leave described in this final rule, namely, administrative leave for investigative purposes, investigative leave, and notice leave. OPM did this by looking at the average number of adverse actions over a recent 3-year period at one cabinet-level agency and at one agency in each of the large, medium, and small independent categories. OPM used average 2024 salaries for the Washington, DC, locality pay area for multiple grade levels (GS–14, step 5; GS–11, step 5; and GS–7, step 5) to estimate the dollar value of investigative and notice leave for full-time General Schedule (GS) employees. We acknowledge that there are non-GS pay systems covered by title 5, U.S. Code, and that some employees subjected to investigative and notice leave may not have full-time work schedules.

For a cabinet-level agency, OPM estimates an average of 1,490 adverse actions per year, at a cost of $24,011,261 in administrative and investigative leave for 40 workdays and $4,933,262 in notice leave for 30 calendar days. For a large independent agency, we estimate an average of 452 adverse actions per year with $7,286,065 in administrative and investigative leave costs and $1,447,070 in notice leave costs. For a medium independent agency, OPM estimates an average of four adverse actions per year with $64,431 in administrative and investigative leave costs and $9,665 in notice leave costs. For a small independent agency, we estimate an average of one adverse action per year with $16,108 in administrative and investigative leave costs and $805 in notice leave costs.

OPM estimates the annual Governmentwide cost for administrative leave for investigative purposes and investigative leave to be $31.4 million and for notice leave to be $6.4 million—a total of $37.8 million per year. As noted above, there may be wide variations from agency to agency in the duration of notice periods for non-appealable actions.

This rule also provides that, pursuant to section 6329b(g), placement on investigative leave for 70 workdays or more is considered a ''personnel action'' in applying the prohibited personnel practices (PPP) provisions at section 2302(b)(8)–(9). In its fiscal year 2023 annual report to Congress, OSC reported that it received 3,101 PPP cases.[60] Note that OSC also reported that the number of PPP complaints received in FY 2023 reflected a reduction from pre-COVID–19 levels. OSC stated that it expects complaint levels to return to pre-pandemic levels, which was approximately an average of nearly 4,000 new PPP complaints per year from FY2016 to FY2020. OPM anticipates that the addition of placement on investigative leave for 70 workdays or more as a personnel action will generate new PPP complaints. We have concluded that an estimate of a 1% increase over pre-pandemic PPP complaint levels is reasonable. That is, we estimate approximately 40 new PPP claims per year based on placement on investigative leave for 70 workdays or more. We expect that the majority of investigations will not require use of 70 workdays or more of investigative leave, and of that limited number, only a minimal number of cases will result in a PPP complaint. The regulations at part 630, subpart O, provide significant guardrails on the use of investigative leave such that agencies will be compelled to use alternatives to investigative leave or meet a high threshold for an extension of investigative leave beyond the initial 30 days. OSC's FY 2023 annual report stated that the average cost for an agency to resolve a PPP was $6,728.[61] Given our estimate of 40 new PPP complaints, we estimate that the Governmentwide average increase is $269,120.

Regarding the impact of this final rule on the estimated costs of the three leave categories, OPM cannot quantify such an impact with great specificity because

[59] This total includes weather and safety leave now governed by section 6329c and OPM regulations.

[60] U.S. Office of Special Counsel, ''Annual Report to Congress for Fiscal Year 2023,'' p. 15, *https://www.osc.gov/Documents/Resources/Congressional%20Matters/Annual%20Reports%20to%20Congress/FY%202023%20Annual%20Report%20to%20Congress.pdf.*

[61] *Id.*

it will largely depend on the specific revisions and implementations that agencies will perform to meet the requirements of the Administrative Leave Act and this final rule, including those relating to granting administrative leave and placing employees into these leave statuses, as well as the number of individuals subject to administrative leave for investigative purposes (under section 6329a and subpart N of these regulations) and investigative leave and notice leave under (section 6329b and subpart O of these regulations). And while there are many variables that make these costs difficult to quantify, it is reasonable to conclude that the usage of administrative leave, investigative leave, and notice leave will change, for the reasons mentioned above regarding the impact of this final rule.

E. Benefits

This rulemaking promotes accountability and Governmentwide consistency and clarity in the use and recording of administrative leave, investigative leave, and notice leave. Although OPM has previously provided guidance on the proper use of administrative leave, agencies will now have the benefit of codified parameters for these new leave categories. The establishment of baseline factors that agencies must consider as well as procedures for the approval and the extensions of investigative leave will engender consistency in how agencies use and track such leave. These provisions will also help agencies, OPM, Congress, and other stakeholders monitor whether supervisors use these types of leave appropriately and sparingly.

VI. Procedural Issues and Regulatory Review

A. Severability

OPM has determined that this rule implements and is fully consistent with governing law. However, in the event any provision of this rule, an amendment or revision made by this rule, or the application of such provision or amendment or revision to any person or circumstance, is held to be invalid or unenforceable by its terms, the remainder of this rule, the amendments or revisions made by this rule, and the application of the provisions of such rule to any person or circumstance shall not be affected and shall be construed so as to give them the maximum effect permitted by law. It is OPM's intent that each and every provision of this regulation be severable from each other provision to the maximum extent allowed by law.

For example, if a court were to invalidate any portions of this final rule imposing requirements on agencies before putting employees on investigative leave, the other portions of the rule—including the portions regarding notice leave—would independently remain workable and valuable. In implementing the provisions of the Administrative Leave Act, OPM will comply with all applicable legal requirements.

B. Regulatory Review

OPM has examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993), as supplemented by Executive Order 13563 (Jan. 18, 2011) and amended by Executive Order 14094 (Apr. 6, 2023), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for certain rules with effects of $200 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

C. Regulatory Flexibility Act

The Acting Director of the Office of Personnel Management certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rule will apply only to Federal agencies and employees.

D. Executive Order 13132, Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Aug. 10, 1999), it is determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E. Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988 (Feb. 7, 1996).

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately $183 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

G. Congressional Review Act

OMB's Office of Information and Regulatory Affairs has determined this rule does not satisfy the criteria listed in 5 U.S.C. 804(2).

H. Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Parts 630 and 752

Government employees.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

For the reasons stated in the preamble, OPM amends 5 CFR parts 630 and 752 as follows:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 is revised to read as follows:

Authority: Subparts A through E issued under 5 U.S.C. 6133(a) (read with 5 U.S.C. 6129), 6303(e) and (f), 6304(d)(2), 6306(b), 6308(a) and 6311; subpart F issued under 5 U.S.C. 6305(a) and 6311 and E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G issued under 5 U.S.C. 6305(c) and 6311; subpart H issued under 5 U.S.C. 6133(a) (read with 5 U.S.C. 6129) and 6326(b); subpart I issued under 5 U.S.C. 6332, 6334(c), 6336(a)(1) and (d), and 6340; subpart J issued under 5 U.S.C. 6340, 6363, 6365(d), 6367(e), 6373(a); subpart K issued under 5 U.S.C. 6391(g); subpart L issued under 5 U.S.C. 6383(f) and 6387; subpart M issued under Sec. 2(d), Pub. L. 114–75, 129 Stat. 641 (5 U.S.C. 6329 note); subpart N issued under 5 U.S.C. 6329a(c); subpart O issued under 5 U.S.C. 6329b(h); and subpart P issued under 5 U.S.C. 6329c(d).

Subpart B—Definitions and General Provisions for Annual and Sick Leave

§ 630.206 [Amended]

■ 2. In § 630.206, remove the second sentence in paragraph (a).

■ 3. Add subpart N to read as follows:

Subpart N—Administrative Leave

Sec.
630.1401 Purpose and applicability.
630.1402 Definitions.
630.1403 Principles and prohibitions.
630.1404 Calendar year limitation.
630.1405 Administration of administrative leave.
630.1406 Records and reporting.

§ 630.1401 Purpose and applicability.

(a) This subpart implements 5 U.S.C. 6329a, which allows an agency to provide a separate type of paid leave, on a limited basis, for general purposes not covered by other types of leave authorized by other provisions of law. Section 6329a(c) authorizes OPM to prescribe regulations to carry out the statutory provisions on administrative leave, including regulations on the appropriate uses and the proper recording of this leave.

(b) This subpart applies to an employee as defined in 5 U.S.C. 2105 who is employed in an agency, but does not apply to an intermittent employee who, by definition, does not have an established regular tour of duty during the administrative workweek.

(c) As provided in 5 U.S.C. 6329a(d), this subpart applies to employees described in subsection (b) of 38 U.S.C. 7421, notwithstanding subsection (a) of that section.

§ 630.1402 Definitions.

In this subpart:

Administrative leave means paid leave authorized at the discretion of an agency under 5 U.S.C. 6329a (and not authorized under any other provision of statute or Presidential directive) to cover periods within an employee's tour of duty established for leave purposes when the employee is not engaged in activities that qualify as official hours of work, which is provided without loss of or reduction in—

(1) Pay;

(2) Leave to which an employee is otherwise entitled under law; or

(3) Credit for time or service.

Agency means an Executive agency as defined in 5 U.S.C. 105, excluding the Government Accountability Office. When the term ''agency'' is used in the context of an agency making determinations or taking actions, it means the agency head or management officials who are authorized (including by delegation, where applicable) to make the given determination or take the given action.

Employee means an individual who is covered by this subpart, as described in § 630.1401(b) and (c).

Head of the agency means the head of an agency or a designated representative of such agency head who is an agency headquarters-level official reporting directly to the agency head or a deputy agency head and who is the sole such representative for the entire agency.

OPM means the Office of Personnel Management.

Presidential directive means an Executive order, Presidential memorandum, or official written statement by the President in which the President specifically directs agency heads to provide employees with a paid excused absence under a specified set of conditions. This excludes a Presidential action that merely encourages agency heads to use an agency head authority (*e.g.,* section 6329a) to grant a paid excused absence under specified conditions or that leaves the amount of excused absence to be granted in specified conditions subject to agency head discretion.

§ 630.1403 Principles and prohibitions.

(a) *General principles.* In granting administrative leave, an agency must adhere to the following general principles:

(1) Administrative leave may be granted (subject to the requirements of this section) only when—

(i) The absence is directly related to the agency's mission;

(ii) The absence is officially sponsored or sanctioned by the agency;

(iii) The absence will clearly enhance the professional development or skills of the employee in the employee's current position; or

(iv) The absence is in the interest of the agency or of the Government as a whole.

(2) Administrative leave is not an entitlement, but is an authority, entrusted to the discretion of the agency, that should be used sparingly, consistent with the sense of Congress expressed in section 1138(b)(2) of Public Law 114–328.

(3) Administrative leave is appropriately used for brief or short periods of time—usually for not more than 1 workday. An incidence of administrative leave lasting more than 1 workday may be approved when determined to be appropriate by an agency.

(4) An agency must retain the discretion to grant or not grant administrative leave in any circumstance based on agency judgments regarding mission needs. Generally, administrative leave should be granted on an ad hoc, event-specific, or time-limited basis. If an agency determines that it will generally grant administrative leave under a specific set of circumstances that may recur (*e.g.,* blood donations, voting-related activities), that determination must allow the agency to not grant administrative leave due to mission needs.

(5) A determination that an absence satisfies one of the conditions in paragraph (a)(1) of this section must be—

(i) Permitted under written agency policies (established by the head of the agency or by other agency officials under a specific delegation of authority); or

(ii) Reviewed and approved by an official of the agency who is (or is acting) at a higher level than the official making the determination, if the specific type of use and amount of leave for that use has not been authorized under established written policy as described in paragraph (i) of this paragraph (a)(5).

(6) In developing agency policies regarding the appropriate uses and corresponding amounts of administrative leave and in approving specific incidents of administrative leave where the particular use was not specifically authorized in agency policies, authorized agency officials must consider the following factors:

(i) The regulations in this subpart;

(ii) The effect on productivity and the agency's ability to meet mission needs;

(iii) Current Administration policies that identify Governmentwide interests;

(iv) The strength of the justification for using appropriated funds for the administrative leave in question;

(v) Equitable treatment of similarly situated employees; and

(vi) The degree of delegation that is appropriate for various uses of administrative leave. (b) *Specific prohibited uses.* An agency may not grant administrative leave—

(1) To mark the memory of a deceased former Federal official (see also 5 U.S.C. 6105); or

(2) As a reward to recognize the performance or contributions of an employee or group of employees (*i.e.,* in lieu of a cash award or a time-off award).

§ 630.1404 Calendar year limitation.

(a) *General.* Under 5 U.S.C. 6329a(b), during any calendar year, an agency may place an employee on administrative leave for no more than 10 workdays. In this context, the term

''place'' refers to a management-initiated action to put an employee in administrative leave status, with or without the employee's consent, for the purpose of conducting an investigation (as defined in § 630.1502). The 10-workday annual limit does not apply to administrative leave for other purposes. After an employee has been placed on administrative leave in connection with such an investigation for 10 workdays, the agency may place the employee on investigative leave under subpart O of this part, if necessary (see 5 U.S.C. 6329b(b)(3)(A) and § 630.1504(a)(1)). This calendar year limitation applies separately to each agency that may employ an employee during the year. Use by different agencies is not aggregated.

(b) *Conversion to a limitation on hours.* This 10-workday calendar year limitation is converted to an aggregate limit on hours, taking into account the different workdays that can apply to employees under different work schedules, as follows:

(1) For a full-time employee (including an employee on a regular 40-hour basic workweek or a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, but excluding an employee on an uncommon tour of duty), the calendar year limitation is 80 hours;

(2) For a full-time employee with an uncommon tour of duty under § 630.210, the calendar year limitation is equal to the number of hours in the biweekly uncommon tour of duty (or the average biweekly hours for uncommon tours for which the biweekly hours vary over an established cycle);

(3) For a part-time employee, the calendar year limit is prorated based on the number of hours in the officially scheduled part-time tour of duty established for purposes of charging leave when absent (*e.g.,* for a part-time employee who has an officially scheduled half-time tour of 40 hours in a biweekly pay period, the calendar year limitation is 40 hours, which is half of the 80-hour limitation for full-time employees);

(4) For an employee who has more than one type of work schedule in effect during different parts of a calendar year, the calendar year limit on hours of administrative leave must be applied by—

(i) Converting hours of administrative leave used under a part-time schedule by multiplying such hours by the ratio of 80 divided by the number of hours in the officially scheduled biweekly part-time tour of duty established for purposes of charging leave when absent;

(ii) Converting hours of administrative leave used under a biweekly uncommon tour of duty under § 630.210 (or the average biweekly hours for uncommon tours for which the biweekly hours vary over an established cycle) by multiplying such hours by the ratio of 80 divided by the number of hours in the uncommon tour of duty;

(iii) Summing the hours of administrative leave used for each period of time under a different type of work schedule, using actual hours for full-time tours and converted hours for part-time and uncommon tours, as determined under paragraphs (b)(4)(i) and (ii) of this section; and

(iv) Applying the sum derived under paragraph (b)(4)(iii) of this section against an 80-hour standard for purposes of the 10-workday limit.

§ 630.1405 Administration of administrative leave.

(a) An agency must use the same minimum charge increments for administrative leave as it does for annual and sick leave under § 630.206.

(b) Employees may be granted administrative leave only for hours within the tour of duty established for purposes of charging annual and sick leave when absent. For full-time employees, that tour is the 40-hour basic workweek as defined in 5 CFR 610.102, the basic work requirement established for employees on a flexible or compressed work schedule as defined in 5 U.S.C. 6121(3), or an uncommon tour of duty under § 630.210.

(c) Agencies authorize, and may require, the use of administrative leave by an employee or a category of employees. Employees do not have an entitlement to receive administrative leave, nor do they have a right to refuse administrative leave when the agency requires its use.

§ 630.1406 Records and reporting.

(a) *Record of usage of administrative leave.* An agency must maintain an accurate record of an employee's usage of administrative leave by recording leave in one of the following subcategories, as applicable in the case at hand:

(1) Administrative leave used for the purposes of an investigation (as described in § 630.1404(a)); or

(2) Administrative leave used for all other purposes.

(b) *Minimum retention period.* An agency must retain the records described in paragraph (a) of this section for a minimum of 6 years from the date the leave was used.

(c) *Reporting.* (1) In agency data systems (including timekeeping systems) and in data reports submitted to OPM, an agency must record administrative leave under section 6329a and this subpart as categories of leave separate from other types of leave. Leave under section 6329a and this subpart must be recorded as either administrative leave used for the purposes of an investigation (as described in § 630.1404(a)) or administrative leave used for all other purposes, as applicable.

(2) Agencies must provide information to the Government Accountability Office as that office is required to submit reports to specified Congressional committees under section 1138(d)(2) of Public Law 114–328 on a 5-year cycle.

■ 4. Add subpart O to read as follows:

Subpart O—Investigative Leave and Notice Leave

Sec.

630.1501 Purpose and applicability.
630.1502 Definitions.
630.1503 Authority and requirements for investigative leave and notice leave.
630.1504 Administration of investigative leave.
630.1505 Administration of notice leave.
630.1506 Records and reporting.

§ 630.1501 Purpose and applicability.

(a) This subpart implements 5 U.S.C. 6329b, which allows an agency to provide separate types of paid leave for employees who are the subject of an investigation or in a notice period. OPM has authority to prescribe implementing regulations under 5 U.S.C. 6329b(h)(1).

(b) This subpart applies to an employee as defined in 5 U.S.C. 2105 who is employed in an agency, excluding—

(1) An Inspector General; or

(2) An intermittent employee who, by definition, does not have an established regular tour of duty during the administrative workweek.

(c) As provided in 5 U.S.C. 6329b(i), this subpart applies to employees described in subsection (b) of 38 U.S.C. 7421, notwithstanding subsection (a) of that section.

§ 630.1502 Definitions.

In this subpart:

Agency means an Executive agency as defined in 5 U.S.C.105, excluding the Government Accountability Office. When the term ''agency'' is used in the context of an agency making determinations or taking actions, it means the agency head or management officials who are authorized (including by delegation) to make the given determination or take the given action.

Chief Human Capital Officer or CHCO means the Chief Human Capital Officer

of an agency designated or appointed under 5 U.S.C 1401, or the equivalent.

Committee of jurisdiction means, with respect to an agency, each committee of the Senate or House of Representatives with jurisdiction over the agency.

Employee means an individual who is covered by this subpart, as described in § 630.1501(b) and (c).

Investigation means an inquiry by an investigative entity regarding an employee involving such matters as: (1) an employee's alleged misconduct that could result in an adverse action as described in 5 CFR part 752 or similar authority or other matters that could lead to outcomes adverse to the employee; and (2) an employee's compliance with or adherence to security requirements. An *investigation* includes:

(1) An inquiry by an investigative entity regarding an employee involving security concerns, including whether the employee should retain eligibility to hold a position that is national security sensitive under E.O. 13467, as amended, and standards issued by the Office of the Director of National Intelligence (ODNI) regarding eligibility for access to classified information under E.O. 12968, as amended, and standards issued by ODNI; or eligibility for logical or physical access to agency facilities and systems under the standards established by Homeland Security Presidential Directive (HSPD) 12 and guidance issued pursuant to that directive;

(2) The period of time during which an appeal of a security clearance suspension or revocation is pending; and

(3) Preparation of an investigative report and recommendation(s) related to the subject of the investigation.

Investigative entity means—

(1) An internal investigative unit of an agency granting investigative leave under this subpart, which may be composed of one or more persons, such as supervisors, managers, human resources practitioners, personnel security office staff, workplace violence prevention team members, or other agency representatives;

(2) The Office of Inspector General of an agency granting investigative leave under this subpart;

(3) The Attorney General; or

(4) The Office of Special Counsel.

Investigative leave means leave in which an employee who is the subject of an investigation is placed, as authorized under 5 U.S.C. 6329b (and not authorized under any other provision of law), and which is provided without loss of or reduction in—

(1) Pay;

(2) Leave to which an employee is otherwise entitled under law; or

(3) Credit for time or service.

Notice leave means leave in which an employee who is in a notice period is placed, as authorized under 5 U.S.C. 6329b (and not authorized under any other provision of law), and which is provided without loss of or reduction in—

(1) Pay;

(2) Leave to which an employee is otherwise entitled under law; or

(3) Credit for time or service.

Notice period means a period beginning on the date on which an employee is provided notice, as required under law, of a proposed adverse action against the employee and ending—

(1) On the effective date of the adverse action; or

(2) On the date on which the agency notifies the employee that no adverse action will be taken.

OPM means the Office of Personnel Management.

Participating in a telework program means an employee is eligible to telework and has an established arrangement with the employee's agency under which the employee is approved to participate in the agency telework program, including on a routine or situational basis. Such an employee who teleworks on a situational basis is considered to be continuously participating in a telework program even if there are extended periods during which the employee does not perform telework.

Telework site means a location where an employee is authorized to perform telework, as described in 5 U.S.C. chapter 65, such as an employee's home.

§ 630.1503 Authority and requirements for investigative leave and notice leave.

(a) *Authority.* An agency may, in accordance with paragraph (b) of this section, and in its discretion, place an employee on—

(1) Investigative leave, if the employee is the subject of an investigation; or

(2) Notice leave—

(i) If the employee is in a notice period; or

(ii) Following a placement on investigative leave if, not later than the day after the last day of the period of investigative leave—

(A) The agency proposes or initiates an adverse action against the employee; and

(B) The agency determines that the employee continues to meet one or more of the criteria described in paragraph (b)(1) of this section.

(b) *Required determinations.* An agency may place an employee on investigative leave or notice leave only if the agency has made a written determination documenting that the agency has—

(1) Determined, after consideration of the baseline factors specified in paragraph (e) of this section, that the continued presence of the employee in the workplace during an investigation of the employee or while the employee is in a notice period, as applicable, may—

(i) Pose a threat to the employee or others;

(ii) Result in the destruction of evidence relevant to an investigation;

(iii) Result in loss of or damage to Government property; or

(iv) Otherwise jeopardize legitimate Government interests; and

(2) Considered the following options (or a combination thereof):

(i) Keeping the employee in a duty status by assigning the employee to duties in which the employee no longer poses a threat, as described in paragraphs (b)(1)(i) through (iv) of this section;

(ii) Allowing the employee to voluntarily take leave (paid or unpaid) or paid time off, as appropriate under the rules governing each category of leave or paid time off;

(iii) Carrying the employee in absent without leave status, if the employee is absent from duty without approval; and

(iv) For an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, consistent with 5 CFR 752.404(d)(1); and

(3) Determined that none of the options under paragraph (b)(2) of this section is appropriate.

(c) *Telework alternative for investigative leave.* (1) If an agency would otherwise place an employee on investigative leave, the agency may require the employee to perform, at a telework site, duties similar to the duties that the employee normally performs if—

(i) The agency determines that such a requirement, at a telework site, would not pose a threat, as described in paragraphs (b)(1)(i) through (iv) of this section;

(ii) The employee is eligible to telework; as set forth in paragraph (c)(2);

(iii) The employee has been participating in a telework program under the agency telework policy during some portion of the 30-day period immediately preceding the

commencement of investigative leave (or the commencement of required telework in lieu of such leave under paragraph (c) of this section, if earlier); and

(iv) The agency determines that teleworking would be appropriate.

(2) For purposes of paragraph (c)(1) of this section, an employee is considered to be eligible to telework if the agency determines the employee is eligible to telework under agency telework policies described in 5 U.S.C. 6502(a) and is not barred from teleworking under the eligibility conditions described in 5 U.S.C. 6502(b)(4). Any telework agreement established under 5 U.S.C. 6502(b)(2) must be superseded as necessary to comply with an agency's action to require telework under 5 U.S.C. 6502(c) and paragraph (c)(1) of this section.

(3) If an employee who is required to telework under paragraph (c)(1) of this section is absent from telework duty without the required approval, an agency may place the employee in absent without leave status, consistent with agency policies.

(4) The agency decision to require telework under this paragraph (c), as well as the supporting agency determinations and any conditions or requirements governing the required telework (*e.g.,* the telework assignment's duration or location), are to be put into effect at the agency's discretion, subject to the requirements of this paragraph (c).

(5) If an agency requires telework in lieu of placement on investigative leave, the agency must provide the employee with a written explanation regarding the required telework in lieu of placement on investigative leave. The written explanation must include the following:

(i) The agency's determination under paragraph (c)(1) of this section; and,

(ii) A description of the limitations of the required telework, including the expected duration of telework.

(d) *Reassessment and return to duty.* (1) An employee may be returned to duty at any time if the agency reassesses its determination to place the employee on investigative leave or notice leave. An employee on investigative leave or notice leave must be prepared to report promptly to work as provided in paragraph (d)(4) of this section. These decisions are at the discretion of the agency.

(2) For an employee on investigative leave, an agency may reassess its determination that the employee must be removed from the workplace based on the criteria in paragraph (b)(1) of this section and may reassess its determination that the options in paragraph (b)(2) of this section are not appropriate. An agency may reassess its previous determination to require or not require telework under paragraph (c) of this section. These decisions are at the discretion of the agency.

(3) For an employee on notice leave, an agency may reassess its determination that the employee must be removed from the regular worksite based on the criteria in paragraph (b)(1) of this section and may reassess its determination that the options in paragraph (b)(2) of this section are not appropriate. These decisions are at the discretion of the agency.

(4) When an employee is placed on investigative leave or notice leave, the employee must be available to report promptly at a time during the employee's regularly scheduled tour of duty and to an approved duty location, if directed by the employee's agency. Any failure to so report may result in the employee being recorded as absent without leave, which can be the basis for disciplinary action. An employee who anticipates being unavailable to report promptly must request leave or paid time off in advance, as provided under paragraph (b)(2)(ii) of this section, to avoid being recorded as absent without leave.

(e) *Baseline factors.* In making a determination regarding the criteria listed under paragraph (b)(1) of this section, an agency must consider the following baseline factors:

(1) The nature and severity of the employee's exhibited or alleged behavior;

(2) The nature of the agency's or employee's work and the ability of the agency to accomplish its mission; and

(3) Other impacts of the employee's continued presence in the workplace detrimental to legitimate Government interests, including whether the employee poses an unacceptable risk to—

(i) The life, safety, or health of employees, contractors, vendors or visitors to a Federal facility;

(ii) The Government's physical assets or information systems;

(iii) Personal property;

(iv) Records, including classified, privileged, proprietary, financial or medical records; or

(v) The privacy of the individuals whose data the Government holds in its systems.

(f) *Minimum charge.* An agency must use the same minimum charge increments for investigative leave and notice leave as it does for annual and sick leave under § 630.206.

(g) *Tour of duty.* Employees may be granted investigative leave or notice leave only for hours within the tour of duty established for purposes of charging annual and sick leave when absent. For full-time employees, that tour is the 40-hour basic workweek as defined in 5 CFR 610.102, the basic work requirement established for employees on a flexible or compressed work schedule as defined in 5 U.S.C. 6121(3), or an uncommon tour of duty under § 630.210.

§ 630.1504 Administration of investigative leave.

(a) *Commencement.* An initial period of investigative leave may not be commenced until—

(1) The employee's use of administrative leave for investigative purposes under subpart N of this part has reached the 10-workday calendar year limitation described in 5 U.S.C. 6329a(b)(1) and § 630.1404, as converted to hours under § 630.1404(b); and

(2) The agency determines that further investigation of the employee is necessary.

(b) *Duration.* The agency may place the employee on investigative leave for an initial period of not more than 30 workdays per investigation. An employee may be placed on investigative leave intermittently—that is, a period of investigative leave may be interrupted by—

(1) On-duty service performed under § 630.1503(b)(2)(i) or (c);

(2) Leave or paid time off in lieu of such service under § 630.1503(b)(2)(ii); or

(3) Absence without leave under § 630.1503(b)(2)(iii).

(c) *Written explanation of leave.* If an agency places an employee on investigative leave, the agency must provide the employee with a written explanation regarding the placement of the employee on investigative leave. The written explanation must include—

(1) A description of the limitations of the leave placement, including the duration of leave;

(2) Notice that, at the conclusion of the period of investigative leave, the agency must take an action under paragraph (d) of this section; and

(3) Notice that placement on investigative leave for 70 workdays or more is considered a ''personnel action'' for purposes of the Office of Special Counsel's authority to act, in applying the prohibited personnel practices provisions at 5 U.S.C. 2302(b)(8)–(9) (see paragraph (i) of this section).

(d) *Agency action.* Not later than the day after the last day of an initial or extended period of investigative leave, an agency must—

(1) Return the employee to regular duty status;

(2) Take one or more of the actions under § 630.1503(b)(2);

(3) Propose or initiate an adverse action against the employee as provided under law; or

(4) Extend the period of investigative leave if permitted under paragraphs (f) and (g) of this section.

(e) *Continued investigation.* Investigation of an employee may continue after the expiration of the initial period of investigative leave under paragraph (b) of this section. Investigation of an employee may continue even if the employee is returned to regular duty status and is no longer on investigative leave.

(f) *Extension of investigative leave*—(1) *Increments.* If an investigation is not concluded at the time the expiration of the initial period under paragraph (b) of this section has elapsed, an agency may extend the period of investigative leave using increments of up to 30 workdays for each extension when approved as described in paragraph (f)(3) of this section. The amount of investigative leave used under the final extension may be less than 30 workdays, as appropriate.

(2) *Maximum number of extensions.* Except as provided in paragraph (g) of this section, the total period of extended investigative leave (*i.e.,* in addition to the initial period of investigative leave) may not exceed 90 workdays (*e.g.,* 3 incremental extensions of 30 workdays). This 90-day limit applies to extensions of investigative leave associated with a single initial period of investigative leave.

(3) *Approval of extensions.* (i) An incremental extension under paragraph (f)(1) of this section is permitted only if the agency makes a written determination reaffirming that the employee must be removed from the workplace based on the criteria in § 630.1503(b)(1) and that the options in § 630.1503(b)(2) are not appropriate.

(ii) Except as provided by paragraph (f)(3)(iii) of this section, an incremental extension under paragraph (f)(1) of this section is permitted only if approved by the CHCO of an agency, or the designee of the CHCO, after consulting with the investigator responsible for conducting the investigation of the employee.

(iii) In the case of an employee of an Office of Inspector General, an incremental extension under paragraph (f)(1) of this section is permitted only if approved (after consulting with the investigator responsible for conducting the investigation of the employee) by—

(A) The Inspector General or the designee of the Inspector General, rather than the CHCO or the designee of the CHCO; or

(B) An official of the agency designated by the head of the agency within which the Office of Inspector General is located, if the Inspector General requests the agency head make such a designation.

(4) *Designation guidance.* In delegating authority to a designated official to approve an incremental extension as described in paragraph (f)(3) of this section, a CHCO must consider the designation guidance issued by the CHCO Council under 5 U.S.C. 6329b(c)(3), except that, in the case of approvals for an employee of an Office of Inspector General, an Inspector General must consider the designation guidance issued by the Council of the Inspectors General on Integrity and Efficiency under 5 U.S.C. 6329b(c)(4)(B).

(g) *Further extension of investigative leave.* An official authorized under paragraph (f)(3) of this section to approve an incremental extension under paragraph (f)(1) of this section may approve further incremental extensions of 30 workdays (*i.e.,* each extension is individually approved for up to 30 workdays) under this paragraph after an employee has reached the maximum number of extensions of investigative leave under paragraph (f)(2) of this section. However, an agency may further extend a period of investigative leave only if the agency makes a written determination reaffirming that the employee must be removed from the workplace based on the criteria in § 630.1503(b)(1) and that the options in § 630.1503(b)(2) are not appropriate. Not later than 5 business days after granting each further extension, the agency must submit (subject to § 630.1506(b)) to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Accountability of the House of Representatives, along with any other committees of jurisdiction, a report containing—

(1) The title, position, office or agency subcomponent, job series, pay grade, and salary of the employee;

(2) A description of the duties of the employee;

(3) The reason the employee was placed on investigative leave;

(4) An explanation as to why the employee meets the criteria described in § 630.1503(b)(1)(i) through (iv) and why the agency is not able to temporarily reassign the duties of the employee or detail the employee to another position within the agency;

(5) In the case of an employee who was required to telework under 5 U.S.C. 6502(c) at any time during the period of investigation prior to the further extension of investigative leave, the reasons that the agency required the employee to telework under that subsection and the duration of the teleworking requirement;

(6) The status of the investigation of the employee;

(7) A certification to the agency by an investigative entity stating that additional time is needed to complete the investigation of the employee and providing an estimate of the amount of time that is necessary to complete the investigation of the employee; and

(8) In the case of a completed investigation of the employee, the results of the investigation and the reason that the employee remains on investigative leave.

(h) *Completed investigation.* An agency may not further extend a period of investigative leave under paragraph (g) of this section on or after the date that is 30 calendar days after the completion of the investigation of the employee by an investigative entity.

(i) *Possible prohibited personnel action.* For purposes of 5 U.S.C. chapter 12, subchapter II, and section 1221, placement on investigative leave under this subpart for a period of 70 workdays or more shall be considered a personnel action for purposes of the Office of Special Counsel in applying the prohibited personnel practices provisions at 5 U.S.C. 2302(b)(8) or (9).

(j) *Conversion of workdays to hours.* In applying this section, the limitations based on workdays (*i.e.,* the 30-workday increments in paragraphs (b), (f), and (g) of this section and the 70-workday limit in paragraph (i) of this section) must be converted to hours, taking into account the different workdays that can apply to employees under different work schedules, as follows:

(1) For a full-time employee (including an employee on a regular 40-hour basic workweek or a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II, but excluding an employee on an uncommon tour of duty), the 30-workday increment is converted to 240 hours and the 70-workday limit is converted to 560 hours.

(2) For a full-time employee with an uncommon tour of duty under § 630.210, the 30-workday increment is converted to three times the number of hours in the biweekly uncommon tour of duty (or the average biweekly hours for uncommon tours for which the biweekly hours vary over an established cycle), and the 70-workday limit is converted to a number of hours derived by multiplying the hours equivalent of 30 workdays (for a given uncommon tour) times the ratio of 70 divided by 30.

(3) For a part-time employee, the calendar year limit is prorated based on the number of hours in the officially scheduled part-time tour of duty established for purposes of charging leave when absent (*e.g.,* for a part-time employee who has an officially scheduled half-time tour of 40 hours in a biweekly pay period, the 30-workday increment is converted to 120 hours, which is half of 240 hours (the 30-workday increment for full-time employees)).

(4) For an employee who has more than one type of work schedule while on investigative leave, the 30-workday and 70-workday limits must be applied by—

(i) Converting hours of investigative leave used under a part-time schedule by multiplying such hours by the ratio of 80 divided by the number of hours in the officially scheduled biweekly part-time tour of duty established for purposes of charging leave when absent;

(ii) Converting hours of investigative leave used under a biweekly uncommon tour of duty under § 630.210 (or the average biweekly hours for uncommon tours for which the biweekly hours vary over an established cycle) by multiplying such hours by the ratio of 80 divided by the number of hours in the uncommon tour of duty;

(iii) Summing the hours of investigative leave used for each period of time under a different type of work schedule, using actual hours for full-time tours and converted hours for part-time and uncommon tours, as determined under paragraphs (j)(4)(i) and (ii) of this section; and

(iv) Applying the sum derived under paragraph (j)(4)(iii) of this section against a 240-hour standard for purposes of the 30-workday limit and against a 560-hour standard for the purposes of the 70-workday limit.

§ 630.1505 Administration of notice leave.

(a) *Commencement.* Notice leave may commence only after an employee has received written notice of a proposed adverse action. There is no requirement that the employee exhaust 10 workdays of administrative leave under 5 U.S.C. 6329a(b) and § 630.1404 before the employee may be placed on notice leave.

(b) *Duration.* Placement of an employee on notice leave shall be for a period not longer than the duration of the notice period.

(c) *Written explanation of leave.* If an agency places an employee on notice leave, the agency must provide the employee with a written explanation regarding the placement of the employee on notice leave. The written explanation must provide information on the employee's notice period and include a statement that the notice leave will be provided only during the notice period.

§ 630.1506 Records and reporting.

(a) *Record of placement on leave.* An agency must maintain an accurate record of the placement of an employee on investigative leave or notice leave by the agency, including—

(1) The reasons for initial authorization of the investigative leave or notice leave, including the alleged action(s) of the employee that required investigation or issuance of a notice of a proposed adverse action;

(2) The basis for the determination made under § 630.1503(b)(1);

(3) An explanation of why an action under § 630.1503(b)(2) was not appropriate;

(4) The length of the period of investigative leave or notice leave;

(5) The amount of salary paid to the employee during the period of leave;

(6) The reasons for authorizing the leave, and if an extension of investigative leave was granted, the recommendation made by an investigator as part of the consultation required under § 630.1504(f)(3);

(7) Whether the employee was required to telework under § 630.1503(c) during the period of the investigation, including the reasons for requiring or not requiring the employee to telework;

(8) The action taken by the agency at the end of the period of leave, including, if applicable, the granting of any extension of a period of investigative leave under § 630.1504(f) or (g); and

(9) Any additional information OPM may require.

(b) *Availability of records.* (1) An agency must make a record kept under paragraph (a) of this section available upon request—

(i) To any committee of jurisdiction;

(ii) To OPM;

(iii) To the Government Accountability Office; and

(iv) As otherwise required by law.

(2) Notwithstanding paragraph (b)(1) of this section and § 630.1504(g), the requirement that an agency make records and information on use of investigative leave or notice leave available to various entities is subject to applicable laws, Executive orders, and regulations governing the dissemination of sensitive information related to national security, foreign relations, or law enforcement matters (*e.g.,* 50 U.S.C. 3024(i), (j), and (m) and Executive Orders 12968 and 13526).

(3) An agency must retain the records described in paragraph (a) of this section for a minimum of 6 years from the date the leave was used.

(c) *Reporting.*

(1) In agency data systems and in data reports submitted to OPM, an agency must record investigative leave and notice leave under 5 U.S.C. 6329b and this subpart as categories of leave separate from other types of leave. Leave under 5 U.S.C. 6329b and this subpart must be recorded as either investigative leave or notice leave, as applicable.

(2) Agencies must provide information to the Government Accountability Office as that office is required to submit reports to specified Congressional committees under section 1138(d)(2) of Public Law 114–328 on a 5-year cycle.

PART 752—ADVERSE ACTIONS

■ 5. The authority citation for part 752 is revised to read as follows:

Authority: 5 U.S.C. 6329b, 7504, 7514, and 7543; Sec. 1097, Pub. L. 115–91, 131 Stat. 1621.

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

■ 6. Revise § 752.404(b)(3)(iv) to read as follows:

§ 752.404 Procedures

* * * * *

(b) * * *

(3) * * *

(iv) Placing the employee in a notice leave status for a period not to exceed the duration of the notice period, provided that the criteria set forth in § 630.1503(b) of this title are met.

* * * * *

Subpart F—Regulatory Requirements for Taking Adverse Action Under the Senior Executive Service

■ 7. Revise § 752.604(b)(2)(iv) to read as follows:

§ 752.604 Procedures

* * * * *

(b) * * *

(2) * * *

(iv) Placing the employee in a notice leave status for a period not to exceed the duration of the notice period, provided that the criteria set forth in § 630.1503(b) of this title are met.

* * * * *

[FR Doc. 2024–29139 Filed 12–16–24; 8:45 am]

BILLING CODE 6325–39–P



FEDERAL REGISTER

Vol. 89 Tuesday,
No. 242 December 17, 2024

Part III

Department of Homeland Security

Coast Guard

46 CFR Parts 1, 10 et al.
Mariner Credentialing Program Transformation; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 10, 11, 12, 13, 14, 15, and 16

[Docket No. USCG–2021–0834]

RIN 1625–AC86

Mariner Credentialing Program Transformation

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing this final rule to permit the electronic submission of required mariner credentialing information to allow for the future implementation of a new Merchant Mariner Credentialing information technology system. This rule also requires the electronic payment of mandatory merchant mariner credentialing fees, removes the requirement for prospective mariners to take an oath before an authorized official, and changes the requirements for the Certificate of Discharge to Merchant Mariners. Finally, this rule makes technical amendments to update addresses and websites, remove antiquated terminology, and adopt gender-neutral terms.

DATES: This final rule is effective January 19, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0834 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document call or email call or email Mr. Charles J. Bright, Coast Guard Office of Merchant Mariner Credentialing, Coast Guard; telephone 202–372–1046, email *Charles.J.Bright@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations
II. Basis and Purpose, and Regulatory History
III. Discussion of Comments and Changes
IV. Discussion of the Rule
V. Regulatory Analysis
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Abbreviations

ACH Automated Clearing House
BLS Bureau of Labor Statistics
CBO Congressional Budget Office
CFR Code of Federal Regulations
CG–MMC Coast Guard Office of Merchant Mariner Credentialing
DHS Department of Homeland Security
EFT Electronic Funds Transfer
Form CG–718A Certificate of Discharge to Merchant Mariner
Form CG–719B Application for Merchant Mariner Credential
FR Federal Register
FRED Federal Reserve Economic Data
GS General Schedule
GSA General Services Administration
ICR Information Collection Request
IT Information Technology
MCP Mariner Credentialing Program
MMC Merchant Mariner Credential
MMLD Merchant Mariner Licensing and Documentation
NHTSA National Highway Traffic Safety Administration
NMC National Maritime Center
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
OPM Office of Personnel Management
RA Regulatory analysis
RFA Regulatory Flexibility Act
REC Regional Exam Center
§ Section
TWIC Transportation Worker Identification Credential
U.S.C. United States Code
USCG United States Coast Guard

II. Basis and Purpose, and Regulatory History

The legal basis of this final rule is title 46 of the United States Code (U.S.C.) Sections 7101(b) and 7301(b), which authorizes the Secretary of the Department of Homeland Security (DHS) to establish the experience and professional qualifications required for the issuance of merchant mariner licenses and documents. The DHS Secretary has delegated the rulemaking authority under 46 U.S.C. 7101 and 7301 to the Coast Guard through DHS Delegation No. 00170.1(II)(92)(e), Revision No. 01.4. Additionally, 14 U.S.C. 102(3) grants the Coast Guard broad authority to issue and enforce regulations for the promotion of safety of life and property on waters subject to the jurisdiction of the United States, which includes establishing the experience and professional qualifications required for the issuance of credentials.

This final rule revises title 46 of the Code of Federal Regulations (CFR), subchapter A, part 1, and subchapter B, parts 10–16, to allow for the electronic submission of information to the Coast Guard for the issuance of a Merchant Mariner Credential (MMC) and the supporting administrative processes, including requiring the payment of mandatory fees through the federal government-recognized system, Pay.gov. The Coast Guard is also removing the requirement for prospective mariners to take an oath before an authorized official and changing requirements for the completion and issue of a Certificate of Discharge to Merchant Mariner (Form CG–718A). In addition, the Coast Guard is making technical amendments to update addresses and websites, remove antiquated terminology, and adopt gender-neutral language.

On March 14, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Mariner Credentialing Program Transformation,'' (89 FR 18706) requesting comments on the proposed changes implemented by this final rule. A detailed description of the background and proposed changes can be found in the NPRM. *See* 89 FR at 18707–09.

III. Discussion of Comments and Changes

In response to our NPRM, the Coast Guard received five written submissions. All were in support of the proposed changes. Two submissions each contained a single comment in support of the proposed changes. Three submissions captured multiple comments, for a total of 11 comments, which provided detailed support of the proposed changes. One comment included a recommendation, which is discussed below.

One commenter recommended the implementation of an electronic merchant mariner credential or e-credential. The Coast Guard appreciates this recommendation and may consider it as part of the future information technology system and the overall changes to the Mariner Credentialing Program (MCP), but finds the recommendation is beyond the scope of this rulemaking. Coast Guard regulations do not specify the form of the credential.

After considering these comments, the Coast Guard is making two modifications from our previously proposed changes. In the NPRM, we proposed removing the words ''the applicant's fingerprints'' from 46 CFR 10.209(e)(3). This paragraph concerns information supplied from the mariner's Transportation Worker Identification Credential (TWIC) enrollment before an MMC or endorsement is issued by the Coast Guard. This proposed change was included in the proposed amendatory

instructions but not in Table 2—Summary of Impacts by Affected CFR Part, Subpart, and Section, or part of the NPRM's Regulatory Analysis. *See* 89 FR at 18707–30.

After consideration, the Coast Guard is not removing the words ''applicant's fingerprints'' from 46 CFR 10.209(e)(3) as part of this final rule. Applicant's fingerprints are a required part of the TWIC enrollment process governed by the Transportation Security Administration (TSA). Although fingerprints are not specifically used by the Coast Guard at this time on MMCs, the Coast Guard will retain the ability to use fingerprints on future MMCs for increased security purposes, especially if an electronic credential is developed as suggested by a comment received to the NPRM and discussed previously.

The Coast Guard is also correcting a scrivener's error contained in our proposed amendatory language for 46 CFR 10.209(d)(1) by removing an unintentional repeat of the word ''and.''

Finally, this final rule removed some amendatory language included in the NPRM that was superseded by the publication of Electronic Submission of Mariner Course Completion Data final rule (Docket No. USCG–2021–0097, RIN 1625–AC75) on November 25, 2024.

IV. Discussion of the Rule

This final rule allows for the electronic submission of MMC applications and supporting documents to the Coast Guard and requires electronic payment of mandatory fees through *Pay.gov.* This final rule also removes the requirement for original MMC applicants to take an oath before an authorized official or notary because the Coast Guard has determined it is a redundant part of the original MMC application process. This rule further amends the process for issuing certificates of discharge for mariners after completing a voyage by clarifying the procedures and by allowing for electronic processing and recordkeeping. Finally, the Coast Guard makes non-substantive changes to antiquated terminology and out-of-date website and address information to clarify existing regulatory text in the affected subparts of the CFR.

To prepare for the future acquisition of an information technology (IT) system to replace the antiquated and inefficient Merchant Mariner Licensing and Documentation (MMLD) system used by the MCP, this rule amends 46 CFR subchapter A, part 1, and subchapter B, parts 10–16, to allow for electronic submission of information, in a manner specified by the Coast Guard, to obtain MMCs, medical certificates, and the approval of mariner training courses and programs, Qualified Assessors, and Designated Examiners. Providing for the electronic submission of required information streamlines the credentialing process and prepares for the fully electronic IT system that will be used by the MCP and industry.

This final rule requires electronic payment of mandatory fees through *Pay.gov.* Manual processing of the previously allowed cash, checks, credit cards, or money orders required significant work hours by National Maritime Center (NMC) and Regional Exam Center (REC) personnel, were difficult to validate and protect using the current system and did not meet the requirements of the U.S. Treasury. With this final rule, the Coast Guard no longer directly accepts payments made using these methods at RECs. Applicants who wish to continue to use cash or money orders can obtain a prepaid credit card to pay fees using *Pay.gov.* Applicants who wish to pay via personal check can make an Automated Clearing House (ACH) payment through *Pay.gov.*

As noted in Section III. Background, of this preamble, the Coast Guard anticipates the use of cash or money orders to continue to decrease, based upon previous payment statistics. This also reflects the overall public trend in the United States to make payments using a credit card, debit card, or check. The 2019 Federal Reserve Payments Study and subsequent updates indicate a continued trend to using cards and ACH, with the growth rate of core noncash payments being 6.7 percent per year from 2015 to 2018, higher than the growth rate of 5.1 percent per year from 2012 to 2015.[1] Credit and debit card usage numbers declined with the onset of the COVID–19 pandemic, mostly from the lack of in-person transactions, but general growth continued, including the percentage of ACH payments.[2] Electronic payment reduces the burden on Coast Guard personnel who process non-electronic payments (cash, check, money orders) and improves customer service to mariners by allowing for better reconciliation and more efficient processing of payments and refunds.

This rule also changes 46 CFR 14.307, regarding entries on certificates of discharge for mariners after completing a voyage, to clarify the procedures and allow for electronic processing and recordkeeping. The process is clarified by requiring that each Master or individual in charge must, for each individual mariner being discharged from the vessel, prepare a Form CG–718A, in accordance with the procedures prescribed by the Coast Guard. The prescribed format may include the current CG–718A or other means provided by the Coast Guard, which allows for electronic processing if available in a new MCP system.

If a Master or individual in charge of a vessel do not use a Coast Guard-prescribed format, the mariner must be provided with all the same information included on Form CG–718A. This ensures the vessel Master or operating companies provide the required information to the mariner but allows for them to use vessel or company specific means, such as a payroll system incorporated in their vessel administrative systems. Following each voyage, every mariner being discharged must validate the information on Form CG–718A by signing it. The change from signing in ''permanent ink'' to ''by signing'' allows for more modern methods such as electronic signature or document verification. Finally, when the mariner departs the vessel, the Master or individual in charge must give Form CG–718A to the mariner, which could be provided electronically with the changes. The changes to Form CG–718A's process creates a more modern and electronic means of processing the document. Under this final rule, there is no change to the certificate of discharge transmission process under 46 CFR 14.311.

In addition, this final rule removes the requirement to take an oath before an authorized official while certifying an Application for Merchant Mariner Credential (Form CG–719B). By signing the form, an individual attests to ''solemnly swear or affirm'' to abide by the requirements of the oath. This legally binds a mariner, so no additional requirement before an authorized official is necessary. The Coast Guard also anticipates that the future MCP system would allow for electronic signatures and additional verification of identity, further negating the need for the requirement to take an oath before an authorized official.

Finally, the Coast Guard adds technical amendments to 46 CFR parts 1 and 10–16 as part of this rulemaking. These amendments account for updates to websites and addresses, remove antiquated language (such as ''licenses'' and ''Merchant Mariner Document (MMD)'', as those credentials are no

[1] The 2019 Federal Reserve Payments Study, p14, *https://www.federalreserve.gov/newsevents/pressreleases/files/2019-payments-study-20191219.pdf.*

[2] Developments in Noncash Payments for 2019 and 2020: Findings from the Federal Reserve Payments Study, p7, *https://www.federalreserve.gov/publications/files/developments-in-noncash-payments-for-2019-and-2020-20211222.pdf.*

longer issued by the Coast Guard), and make non-substantive changes to ensure gender-neutrality throughout.

V. Regulatory Analysis

We developed this final rule after considering numerous statutes and Executive orders related to the final rule. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has not been designated by OMB as a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed it. The Coast Guard received no public comments on the regulatory analysis for the proposed rule. Details on the estimated cost savings of this final rule can be found in the rule's Regulatory Analysis (RA) that follows.

Changes From the Notice of Proposed Rulemaking

For the reasons discussed in section III of this preamble, Discussion of Comments and Changes, we have made two changes to the regulatory text from the proposed rule. In § 10.209(e)(3), we retain the regulatory text ''the applicant's fingerprints,'' and in § 10.209(d)(1), we make a minor editorial change to remove an extra word ''and'' in the regulatory text. These changes do not necessitate a change to either the methodology or type of data used in the RA from the NPRM. We updated the regulatory analysis from the NPRM to account for 2023 wage rates.

For this regulatory analysis, the term ''applicants'' refers to all individuals who pay mandatory fees associated with an MMC application. The changes and estimated cost savings for § 10.219(d) affect these applicants. The phrase ''original applicants'' refers to individuals who are applying for their first MMC and therefore are currently required to take an oath before an authorized official. The number of original applicants is a subset of all applicants because they must also pay fees. The changes and cost savings to § 10.225(c) affect only original applicants.

In this final rule, the Coast Guard updates 46 CFR subchapter A, part 1, and subchapter B, parts 10–16. The final rule will:

- Require electronic payment of merchant mariner credentialing fees in § 10.219(d); [3]
- Remove the requirement for an oath to be administered by an official who serves as a notary public (or an authorized official who can administer an oath) on Form CG–719B in § 10.225(c);
- Allow for the electronic submission of certain documents in §§ 1.03–15(h)(2)(i) for appeals involving course approvals and merchant mariner personnel issues and 10.219(i) for requests involving no-fee MMCs;
- Consolidate, condense, and clarify regulatory text for the processing of Form CG–718A in §§ 14.307(a), (b), and (c) when a mariner completes a voyage; and
- Make non-substantive, editorial changes to current regulatory text, such as pronoun changes, address changes, the removal of certain terms, and other minor grammatical changes.

Table 1 presents a summary of the impacts of the final rule.

BILLING CODE 9110–04–P

[3] This final rule affects all applicants who apply for MMCs. Mandatory fees include evaluation, examination, and issuance fees. The Coast Guard data does not differentiate between these fees in the data it collects; the data the Coast Guard collected for this analysis are for any fees where applicants may pay for any or all of them at one time.

Table 1. Summary of Impacts of the Final Rule

Category	Summary
Applicability: 46 CFR subchapter A, part 1, and subchapter B, parts 10-16	- Requires applicants for an MMC to pay evaluation, examination, and issuance fees electronically through Pay.gov[4]; - Removes requirement for original applicants to take an oath before an authorized official; - Provides the option of electronic submission of additional documents to support MMC applications and Coast Guard approvals; and - Makes editorial changes that clarify, remove, condense, and add non-substantive regulatory text.
Affected Population	- Applicants for MMCs; and - Approximately 36,838 applicants[5], annually.
Total Cost Savings of Final Rule: (7-percent discount rate-all estimates in table, 2023 dollars)	**Assumption 1 (Cost Savings to applicants of MMCs)**: -Approximately $2.7 million over 10-year period of analysis. -Annualized, approximately $387,959. **Assumption 2 (Cost Savings to applicants of MMCs)**: -Approximately $3.3 million over 10-year period of analysis. -Annualized, approximately $467,552. **Federal Government Cost Savings**: -Approximately $230,491 over 10-year period of analysis. -Annualized, approximately $32,817. **Total Cost Savings of Final Rule** (includes Government estimates): **Assumption 1**

	-Approximately $2.96 million over 10-year period of analysis. -Annualized, approximately $420,776. **Assumption 2** -Approximately $3.5 million over 10-year period of analysis. -Annualized, approximately $500,369.
Unquantifiable Costs	-There are no regulatory provisions of the final rule that impose net costs on individuals, companies, or the maritime industry. -The final rule removes non-electronic and in-person payments options for applicants. -This final rule removes requirements in § 10.219(d) and § 10.225(c), which produces net cost savings to applicants.
Unquantifiable Cost Savings	- Provides cost savings from the option of electronic submission of certain documents in parts 1.03-15(h)(2)(i) and 10.219(i).
Unquantifiable Benefits	- Provides flexibility with option of electronic submission of certain documents; - Clarifies submission of Form CG-718A in part 14.307; allows for additional signature methods and retention procedures.

Note: Cost savings estimates in each assumption include estimates for § 10.219(d).

BILLING CODE 9110–04–C

We discuss the economic impact of these items individually in the cost savings section of this RA.

This final rule generates cost savings to applicants, including original applicants, for two changes in 46 CFR 10.219(d) and 10.225(c), and for the Federal Government in § 10.219(d).

For § 10.219(d), each applicant will save approximately $13.06 for a credit card payment and about $11.41 for a cash payment with this final rule.

For § 10.225(c), under Assumption 1, for all applicants, an individual applicant will save about $17.68; and under Assumption 2, for half of the applicants (6,976), each applicant who goes to a bank branch will save about $17.68; for the other half (6,976) of the applicants who go to a notary service, half of whom pay by credit card (3,488) and half of whom pay by cash (3,488); each applicant who pays by credit card will save about $23.61, and by cash, about $22.24.

First, the changes in § 10.219(d) requires an applicant for an MMC to pay the required evaluation, examination, and issuance fees by electronic means through *Pay.gov*. Currently, an applicant can make a payment in person at an REC using cash, check, credit card or money order. With this final rule, the Coast Guard no longer accepts direct payments made using these methods; as a result, this final rule removes the payment options made with cash, check (in person), credit card (in person), and money order, and payments made by standard mail. The cost savings that we estimate for § 10.219(d) are for applicants who no longer expend the time to visit an REC to pay the fees by cash, check, credit card, and for payments made by check through standard mail. For the purpose of this analysis, we analyzed payments made by cash and credit card because they represented the majority of payments made in person at RECs. We also analyzed check and money order payments made by applicants outside of RECs. In addition to cash and credit card payments, applicants can also make payments by check and money order in person at an REC. However, the Coast Guard does not collect data to show where applicants made these payments. For this analysis and based on Coast Guard information from RECs,

[4] Readers can access the National Maritime Center's (NMC) website and *Pay.gov* to obtain information about the payment of fees at *www.dco.uscg.mil/nmc/fees/*. The Coast Guard accessed this web page in August 2024.

[5] For this regulatory analysis, the term ''applicants'' refers to all individual applicants who pay mandatory fees. The changes and estimated cost savings for § 10.219(d) affect these applicants. The phrase ''original applicants'' refers to individuals who apply for their first MMC and therefore are required by existing regulation to take an oath before an authorized official. The changes and cost savings to § 10.225(c) affect only original applicants. We also assume the affected population of applicants has bank accounts.

most applicants pay by cash or credit card at RECs; we then assumed applicants made check and money order payments by standard mail outside of an REC.

The changes to § 10.219(d) also generates cost savings for the Federal Government and Coast Guard employees who no longer expend the time to process in-person payment transactions at RECs.

The cost savings associated with § 10.225(c) is from the removal of the requirement to have an oath administered by a person legally qualified to administer an oath, or a notary public, near an original applicant's place of residence (in the town or city where an original applicant resides) before an original applicant receives an MMC.[6] The Coast Guard does not expect the Federal Government to realize any cost savings associated with this change. The remaining changes will not generate any costs or cost savings to the maritime industry, individuals, or the Federal Government. Lastly, this final rule does not alter any current OMB-approved Coast Guard information collection request (ICR).

§ 10.219(d)

We estimate the total discounted cost savings for the change to § 10.219(d) for applicants who pay mandatory fees at RECs (typically by cash or credit card) and for applicants who pay by check and money order outside of an REC through standard mail to be approximately $1.0 million, rounded, over a 10-year period of analysis, using a 7-percent discount rate. The cost savings are associated with the time (transaction time) applicants save from making in-person payments to using *Pay.gov*. We estimate the annualized cost savings for applicants who pay in-person at RECs and by cash to be approximately $3,319 rounded, using a 7-percent discount rate. We estimate the annualized cost savings for applicants who pay in-person at RECs by credit card to be approximately $130,039, rounded, using a 7-percent discount rate. We estimate the annualized cost savings for applicants who pay by check and money order through standard mail to be approximately $7,962 rounded, using a 7-percent discount rate. Finally, we estimate the total annualized cost savings of part 10.219(d) to applicants who pay in-person at RECs and by check and money order to be approximately $141,320 ($3,319 + $130,039 + $7,962), rounded.

We estimate the discounted cost savings to the Coast Guard for the change to § 10.219(d) to be approximately $230,491 over a 10-year period of analysis, using a 7-percent discount rate. In addition, we estimate the annualized cost savings to the Coast Guard for this regulatory provision to be approximately $32,817, rounded, using a 7-percent discount rate.

§ 10.225(c)

In this regulatory analysis, we make two assumptions associated with the removal of the requirement to take an oath before an authorized official in § 10.225(c). These assumptions apply to applicants who pay the mandatory fees and take an oath at a location other than an REC or at their place of residence (for the purpose of this regulatory analysis, we refer to individuals who are affected by the changes to § 10.225(c) only as ''original applicants''). These two assumptions are necessary because the Coast Guard does not have data on whether original applicants obtain an oath through a notary public service at a bank near their place of residence, which is (Assumption 1), where an individual can obtain an oath for an original application along with a notary public signature, which we assume to be free of charge; or elsewhere, other than a bank, which is (Assumption 2), where there is a cost for the notary public service.[7]

Therefore, if the reader accepts Assumption 1 to be representative of the current actions by applicants, then the cost savings the Coast Guard estimates for this assumption to be the cost savings of the final rule, in addition to the cost savings from the change to § 10.219(d). If the reader accepts Assumption 2 to be representative of the current actions by applicants, then the cost savings the Coast Guard estimates for this assumption is the cost savings of the final rule, in addition to the cost savings from the change to § 10.219(d).

Other assumptions may be made by the reader about the locations or establishments where original applicants obtained an oath through a notary public service, such as through legal services, at a title application company, or other such local business services, but we believe these assumptions capture the actions that applicants take when they apply for MMCs. Lastly, for the purpose of this analysis, the Coast Guard assumes applicants have bank accounts.

Assumption 1 for § 10.225(c):

Our first assumption is that original applicants, who are affected by this part of the final rule, can obtain an oath through a notary public service or at a bank branch (which we assume to be free of charge with a bank account) near where they reside.[8] Under this assumption, we estimate this final rule will save all original applicants (an estimated 13,951 annually, rounded) a discounted amount of approximately $1.7 million over a 10-year period of analysis, using a 7-percent discount rate. The cost savings include the cost of the travel time for an applicant who travels to obtain a notary public, the mileage cost, and the time an applicant waits at a bank to obtain a notary public signature. We estimate the annualized cost savings for original applicants to be approximately $246,640, using a 7-percent discount rate. These figures do not include the cost savings for the change to § 10.219(d).

Assumption 2 for § 10.225(c):

Our second assumption is that half of the original applicants can obtain an oath through a notary public service at a bank or bank branch near where they reside, which we assume to be free of charge (with a bank account). The other half of original applicants (an estimated 6,976 annually, rounded) can obtain this service at a state office, an establishment that provides notary public services, or a similar entity which charges for a notary public service. Assumption 2 considers the cost savings associated with the removal of the oath and the notary public service for the affected population of all original applicants, or 13,951. Under this assumption, we assumed half of the original applicants will obtain a notary public at a bank, where it is free of charge, and half at an

[6] A notary public is an individual who has met the requirements to provide notary public services to the general public in order to verify a person's identity. Currently, in the case of Form CG–719B, when an original applicant applies for an MMC either at an REC or near an original applicant's place of residence (either at a bank or bank branch or where there is a notary service in the U.S.), the original applicant must sign the form in the presence of a notary public. The notary public must also sign the form; this process serves as the oath for the original applicant in accordance with the information contained in Form CG–719B. Readers can access *www.nationalnotary.org* to obtain more information about notary services in the U.S. The Coast Guard accessed this web page in May 2024.

[7] The Coast Guard collects information on the number of payment transactions for original applications and for other payments of MMC fees. For the purpose of this analysis, we assumed each payment transaction represents one individual or mariner. There may be more than one payment transaction for an application, but for tractability of this analysis, we assumed a one-to-one ratio.

[8] The Coast Guard acknowledges that some banks or bank branches may not provide a notary public service free of charge; however, we assumed applicants with a bank account at a given bank do not incur a cost for a notary public service if they are a member of that bank. Readers can access these websites for more information on notary public services at banks: *https://www.bankofamerica.com/signature-services/notary/,* and *https://www.citizensbank.com/learning/notary-public-services.aspx.*

establishment other than a bank, where there is a cost for a notary public. The cost savings for half of the original applicants who obtain a notary public at a bank is from the time it takes to travel to a bank, the mileage cost, and the time to wait at a bank for a notary public. The cost savings for the other half of original applicants who obtain a notary elsewhere is the same as applicants that go to a bank with the addition of the cost savings from not having to pay for a notary public.

With this assumption, the Coast Guard estimates the final rule will save original applicants a discounted amount of approximately $2.3 million over a 10-year period of analysis, using a 7-percent discount rate. The Coast Guard estimates the annualized cost savings for original applicants to be approximately $326,232, using a 7-percent discount rate. These figures do not include the cost savings for the change to § 10.219(d).

For each assumption, the Coast Guard adds the same cost savings estimate for original applicants who are required to pay the fees electronically under the changes to § 10.219(d), or $141,320 annualized, rounded. Specifically, for Assumption 1, the Coast Guard estimates the total discounted cost savings of the final rule for applicants to be approximately $2.7 million over a 10-year period of analysis, using a 7-percent discount rate. The Coast Guard estimates the total annualized cost savings of the final rule under this assumption to be approximately $387,959.

For Assumption 2, the Coast Guard estimates the total discounted cost savings of the final rule for applicants to be approximately $3.3 million over a 10-year period of analysis, using a 7-percent discount rate. The Coast Guard estimates the total annualized cost savings of the final rule under this assumption to be approximately $467,552.

In addition, the final rule generates benefits in the form of cost savings to MMC applicants. These benefits include:

- A simplified payment transaction through electronic means (Pay.gov), saving applicants time and money; and
- Reduced time burden for original applicants who no longer need to obtain an oath before an authorized official, which saves time and money.

This final rule generates unquantifiable benefits, which include:

- Flexibility for applicants by providing the option to electronically submit documents including the no-fee determination of eligibility request and the certificate of discharge; unquantifiable cost savings for applicants who choose the option to electronically submit certain documents;
- Removal, addition, and clarification of regulatory text for Form CG–718A and other non-substantive regulatory text changes. The benefit to mariners is clearer regulatory text as a result of the editorial changes that we made.

Table 2 presents a summary of the estimated impacts of the final rule.

Table 2. Summary of Impacts of the Final Rule by Affected CFR Part, Subpart, and Section

46 CFR Section(s) Affected	Description of Final Rule Change	Economic Impact	Estimated Cost or Cost Savings (2023 dollars)
Part 1- Organization, General Course and Methods Governing Marine Safety Functions Subpart 1.01 - Organization and General Flow of Functions: 1.01-15(e)	Editorial; non-substantive regulatory text changes, which includes updated website for merchant mariner credentialing.	No estimated impact.	None
Subpart 1.03 - Rights of Appeal: 1.03-15(h)(2)(i)	Editorial; non-substantive regulatory text changes. Adds option of electronic submission for appeals for course approvals.	No estimated impact. Manner of submission includes option of electronic submission of appeals. Unquantifiable benefit of option for electronic submission of appeal, current paper-based appeal process is still accepted.	None
Part 10 - Merchant Mariner Credential Subpart A - General: 10.107	Editorial; non-substantive regulatory text changes.	No estimated impact. Clarifies the definition of "regional examination center or REC"; adds definitions for "written," "writing," and "in writing."	None
Subpart B - General Requirements for All Merchant Mariner Credentials: 10.203(b); 10.203(c); 10.205(g); 10.209(d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.209(d)(1); 10.209((d)(2); 10.209(d)(3) 10.209(e)(3)-change from proposed rule	Editorial: removes regulatory text for applicant to retain photocopy of credential and submission of certain	No estimated cost impact for removal of photocopy of credential and submission of certain documents because	None

	documents in paragraph (d)(2). Other non-substantive regulatory text changes in paragraphs (d)(1), (d)(3), and (e)(3).	requirement is still retained in §§ 10.227 and 10.231.	
10.209(i)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.211(f), (i), (j), (k), and (l)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.213(f)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.219(d)	Condenses paragraphs (d)(1) through (5) into one paragraph; requires payments to be made electronically.	Cost savings in time saved for payment transaction for applicants who chose to pay in person at an REC and are now required to submit payment electronically. Cost savings from mail-in checks. This removes the in-person option for applicants who chose to pay in person at an REC.	Estimated annualized cost savings of approximately $141,320 to applicants; 10-year discounted cost savings of approximately $1.0 million at 7-percent discount rate. Federal Government annualized cost savings of approximately $32,817; 10-year discounted cost savings of approximately $230,491 at 7-percent discount rate.
10.219(i)(1)	Editorial; non-substantive regulatory text changes. Adds option of electronic submission of request for determination of a request for a fee waiver.	No estimated impact; manner of submission includes option for electronic submission. Unquantifiable benefit of option for electronic submission of request for determination of eligibility, current paper-	Unquantifiable cost savings.

		based request is still accepted.	
10.223(c)(iv)(5)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.225(c) [Please note, the cost savings estimates the Coast Guard presents for each assumption in this subpart do not include the estimates in § 10.219(d)]	Removes the requirement for an oath to be administered by any Coast Guard designated individual or any person legally permitted to administer oath in jurisdiction of individual's place of residence. Other minor non-substantive regulatory text changes.	Cost savings for original applicants who obtain an oath other than through a designated Coast Guard individual because it is free of charge at an REC. Cost savings is from original applicants who do not need notary public signature on Form CG-719B.	**Assumption 1**: Estimated annualized cost savings is approximately $246,640; 10-year discounted cost savings approximately $1.7 million at 7-percent discount rate. **Assumption 2**: Estimated annualized cost savings is approximately $326,232; 10-year discounted cost savings approximately $2.3 million at 7-percent discount rate.
10.227(d)(4); 10.227(e)(1)(i); 10.227(e)(1)(iv); 10.227(e)(4); 10.227(e)(6)(ii); 10.227(g)(2)(ii); 10.227(h) and (i)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.231(c)(5)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.232(a); 10.232(a)(4); 10.223(d); 10.223(d)(3); 10.223(d)(6)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.233(a), (b), and (c)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.235(c), (d), (h), and (i)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

10.239, table 1	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart C – Medical Certification: 10.302(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart D - Training Courses and Programs: 10.404	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
10.405(a)(3); (b)(3) and (d); 10.409(e)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Part 11- Requirements for Officer Endorsements Subpart A – General: 11.101(b); 11.102(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart B -General Requirements for Officer Endorsements: 11.201(c)(4), (g)(1) and (2), (h), (i) and (k); 11.211(c); 11.217(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart C - STCW Officer Endorsements: 11.301(g); 11.337(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart D - Professional Requirements for National Deck Officer Endorsements: 11.401(a), (b), and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.402(c)(2) and (3), and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.404(a)(2) and (b); 11.405(a);	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

11.406(a)(1) and (2), and (c); 11.407(c) and (d)			
11.412(a)(1) and (2), and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.414(a)(1)(iii)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.418(a)(1) and (2), and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.420(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.422(b)(4) and (c); 11.424(a)(1) and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.425(a)(2), (b), and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.426(a)(1)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.427(a)(2), (b), and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.428(b); 11.429(c)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.433(a)(1) and (3); 11.435(a)(1) and (2); 11.437(a)(3)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.442(a)(1) and (2); 11.444(a)(2); 11.446(a)(1) and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.450(c) and (d); 11.452(a) and (b); 11.454(c) and (d); 11.457(a) and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.462(c) and (c)(4)(v) and (vi), and (d)(4)(iv), (v), and (vi)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.464(d), (g), and (h)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

11.465(a), (d), and (e); 11.466(b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.470(b)(1) and (2), (c), (d)(1) and (d)(2), and (d)(2)(i), (e), (f)(2), (g), (h)(1), (h)(2), (h)(2)(i), (i), (j)(2), and (j)(2)(i), and (k)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.472(a)(1), (a)(2), and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.474(a)(1), (a)(1)(i), (a)(1)(ii), (a)(2), and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.480(b), (d), (f), and (h)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.482(b), (c), and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.491(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart E – Professional Requirements for National Engineer Officer Endorsements: 11.501(c), (d), and (e)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.502(b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.503(a), (c)(2), (3), and (4), and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.510(a)(2); 11.512(a)(1)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.514(a)(1) and (2)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.542(a)(1) and (2), and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

11.544(a)(1) and (2), and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart F - Credentialing of Radio Officers: 11.603; 11.604	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart G - Professional Requirements for Pilots: 11.701(d); 11.703(d); 11.705(c); 11.707(b); 11.713(a) and (b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart H - Registration of Staff Officers and Miscellaneous Endorsements: 11.805(a) and (b); 11.807(d); 11.821(b)(2)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart I -Subjects of Examinations: 11.903(c)(1)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
11.920 table 2 title	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Part 12 - Requirements for Rating Endorsements - Subpart A - General: 12.103(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart B -General Requirements for Rating Endorsements: 12.201(a)(2)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart C - Requirements for National Deck Rating Endorsements: 12.401(c)(3); 12.405(a); 12.407(b)(1)(iii);	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

12.409(b)(1)(iii)			
Subpart E -General Requirements for a Qualified Member of the Engine Department (QMED): 12.501(c)(3); 12.625(a)(1); 12.627(a)(1)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart G - Entry-Level National Ratings and Miscellaneous Ratings: 12.707; 12.709(a); 12.711(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart H - Non-Resident Alien Members of the Steward's Department on U.S. Flag Large Passenger Vessels: 12.809(b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Part 13 – Certification of Tankerman **Subpart A - General**: 13.103(a) and 13.107(a), (b), (c), (d), (e), and (f)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
13.111(d)(3) and (4); 13.120(a), (b), (c), and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart B - Requirements for Tankerman-PIC Endorsement: 13.201(c)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
13.203(a), (b), and (c)(2); 13.205	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart C - Requirements for Tankerman-PIC	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

(Barge) Endorsement: 13.301(c); 13.303(a) and (c)(2); 13.305			
Subpart D - Requirements for Tankerman-Assistant Endorsement: 13.401	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
13.405(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart E - Requirements for Tankerman-Engineer Endorsement: 13.501(c); 13.503(a); 13.505(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Part 14 - Shipment and Discharge of Merchant Mariners Subpart A - General: 14.205; 14.207(a)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart C - Discharge of Merchant Mariners: 14.307(a), (b), and (c)	Removes regulatory text in paragraph (a), which includes the number of copies of Form CG-718A and other mariner information. Removes paragraphs (d) and (e) and consolidates regulatory text changes into paragraphs (b) and (c).	No estimated impact. Removal and consolidation of information in current paragraphs (a), (d), and (e) into paragraphs (a), (b), and (c) is currently required on Form CG-718A.	None
Subpart D - Oceanographic Research Vessels: 14.403(a)(1) and (2); 14.405(c) and (d)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

Part 15 – Manning Requirements: Numerous paragraphs in 15.103, 15.105, 15.410, 15.515, 15.520, 15.605, 15.610, 15.701, 15.730, 15.805, 15.810, 15.812, 15.815, 15.820, 15.825, 15.901, 15.905, 15.915, 15.1001,	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Part 16 - Chemical Testing Subpart B - General:	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
16.220(a)(1), (3), and (5); 16.230(b)(1)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None
Subpart E - Management Information System: 16.500(b)	Editorial; non-substantive regulatory text changes.	No estimated impact.	None

Affected Population

The affected population of this final rule are applicants for an MMC (includes original applications or applicants who apply for an MMC for the first time) who pay MMC fees in person at an REC or outside of an REC through standard mail. Based on historical data from the NMC, the Coast Guard analyzed information on applicants who paid mandatory fees electronically through Pay.gov over a 7-year period from 2015 to 2021. Based on payment data from the NMC, one payment transaction represents one applicant for all transactions. Under this assumption, we assumed an applicant makes one trip to an REC and pays for all transactions at that time instead of taking time to make multiple trips and paying separately for transactions. For applicants who paid fees in person at RECs, the Coast Guard used a 5-year data period from 2015–2019 because after 2019, in-person transactions became very sporadic at RECs due to COVID–19 pandemic protocols and the data are not representative of the transactions over this period of time. The Coast Guard then established two population groups. For § 10.225(c) of this final rule, the Coast Guard defined the population as original applicants who paid mandatory fees by money order, check, and through Pay.gov, which gave us the number of applicants who took the oath outside of an REC and obtained a notary public service near where they reside. This is for individuals who applied for an original MMC only. As an annual average, the NMC recorded approximately 13,951 payment transactions for original applications between 2015 and 2021.

For § 10.219(d) of this final rule, the Coast Guard defined part of the population as applicants who paid the fees by cash or credit card in person at RECs for original applications, which gave us an estimated the number of individuals who likely took the oath at RECs, where it is free of charge.[9] As an annual average, the NMC recorded approximately 1,206 in-person payment transactions for original applications between 2015 and 2019. For all other fees paid by applicants other than original applicants, the NMC recorded an annual average of 9,043 in-person payment transactions between 2015 and 2019. The Coast Guard estimates the total average annual population of applicants, who paid fees in person at an REC during this period, to be approximately 10,249 applicants.

Between 2015 and 2021, the Coast Guard also recorded an annual average of approximately 12,638 payments made by applicants who paid by check or money order outside of an REC through standard mail. Therefore, the Coast Guard estimates the total average annual population affected by this final rule to be approximately 36,838 (13,951 + 10,249 + 12,638) applicants (see table 3).

[9] Based on NMC data, most applicants paid fees by cash or check at RECs; however, a small, unknown number of applicants paid by check or money order. The Coast Guard does not maintain data on applicants who paid by check or money order at RECs, which may result in an underestimation of applicants who paid fees in person by these two methods.

Table 3. Affected Population of the Final Rule

Affected Group	Affected CFR Section	Population
Original applicants who paid fees electronically and took oath outside of an REC for original applications (relatively near place of residence)	10.225(c)	13,951
All applicants including a subset of original applicants who paid fees in person at RECs.	10.219(d)	10,249 (9,958 by credit card and 291 by cash; 1,206 from original applicants and 9,043 from other applicants)
All applicants who paid by check or money order through standard mail.	10.219(d)	12,638
Total	-	**36,838**

Note: The populations that the Coast Guard presents in this table are annual averages.

Cost Savings Analysis

Two changes in this final rule (in 46 CFR 10.219(d) and 10.225(c)) result in quantifiable cost savings for MMC applicants. The other changes have no quantifiable economic impact on individuals, companies, or businesses, and will not result in costs or cost savings to them.

The option in 46 CFR 1.03–15(h)(2)(i) and 10.219(i)(1) for electronic submission of certain documents that currently must be submitted by paper copy (see table 2) will likely have cost savings associated with it, but we are not able to quantify these savings in this analysis because the Coast Guard does not have data to show how many electronic submissions we will receive in the future. Additionally, because of the COVID–19 pandemic, the Coast Guard is not able to accurately determine a future trend of the number of documents that applicants will choose to submit to the Coast Guard electronically.

In table 2, we presented a summary of the estimated impacts of the final rule and provided a description of the change for each affected CFR section. Where the description reads ''Editorial; non-substantive regulatory text changes,'' we make changes that include the addition, deletion, consolidation, and clarification of regulatory text that do not have cost or cost savings associated with them. These changes include minor grammatical revisions, such as changes to punctuation and pronoun changes; the clarification of regulatory text by removal, deletion, or consolidation of terms; definitional changes; and changes that update Coast Guard website addresses. This includes changes in § 10.209(d)(2), ''General Application Procedures,'' where the Coast Guard removes the regulatory text governing the submission of certain documents by applicants. There are no costs or cost savings for individuals that are associated with this change because the Coast Guard still retains this requirement in §§ 10.227 and 10.231.

For § 1.03–15(h)(2)(i), ''General,'' the Coast Guard adds the option of electronic submission of an appeal for course approvals and merchant mariner personnel to the Coast Guard. There are no quantifiable cost or cost savings associated with this change because the Coast Guard does not have data on the future use of electronic submission for appeals. The Coast Guard still accepts the current paper-copy submission method for appeals.

For § 10.219(i)(1), ''Determination of Eligibility,'' the Coast Guard adds the option of electronic submission of an eligibility request to the Coast Guard for the items listed in 10.219(h). There are no quantifiable cost or cost savings associated with this change because the Coast Guard does not have data on the future use of electronic submission with this item. The Coast Guard still accepts the current paper-copy submission method for these requests.

For § 14.307, ''Entries on certificate of discharge,'' the information the Coast Guard removes in current paragraphs (d) and (e) is currently contained in form CG–718A, ''Certificate of Discharge to Merchant Mariner;'' therefore, there is no cost or cost savings associated with this change.[10] The Coast Guard removes, consolidates, and condenses the existing regulatory text into paragraphs (a), (b), and (c) of this section. The changes to this section do not change the current OMB-approved ICR or alter its burden estimates because the Coast Guard is not making any changes to the reporting requirements in form CG–718A.

Cost Savings Analysis for the Changes to § 10.219(d)/Electronic Payment of Fees

The Coast Guard amends § 10.219(d) and removes the option for applicants to pay merchant mariner credentialing fees in person at an REC by cash or credit card (applicants who pay in person may also pay by check or money order; because the Coast Guard does not collect data on where these payments were made, and based on payment data from the NMC, most applicants pay by cash or with a credit card in person) since credit card transactions are processed by individual RECs and cash payments are not accepted through standard mail. The Coast Guard instead requires all payments to be made electronically through the Government's payment system at *Pay.gov*.[11] For

[10] This form is part of a currently OMB-approved Coast Guard ICR with a control number of 1625–0012. Readers can access NMC's website at *https://www.dco.uscg.mil/national_maritime_center/* to view this form and obtain information about the application process. The Coast Guard accessed this web page in August 2024.

[11] *Pay.gov* accepts three payment types: credit card, prepaid card, and ACH payments. The Coast Guard does not collect data on the usage of prepaid cards for applicants who use *Pay.gov*. The Coast Guard also did not estimate a cost (and subsequent

Continued

payments made by check outside of an REC, applicants mailed the checks to the Coast Guard by standard mail. With the final rule, the Coast Guard still accepts payment by check, but applicants are required to use a bank ACH payment through *Pay.gov*. Applicants who mailed checks to the Coast Guard will save the postage cost with this final rule. The Coast Guard expects that applicants have access to the requisite technology to pay credentialing fees through *Pay.gov*. According to the U.S. Census Bureau's 2022 American Community Survey, approximately 95 percent of American households have one or more electronic devices such as a desktop or laptop computer, a smartphone, or tablet.[12] This included over 90 percent of households that have an internet subscription that will facilitate access to *Pay.gov*.[13] Even if an applicant or household does not have access to a computer at home or the internet individually, in this case, the Coast Guard assumes for the purpose of this analysis, that an applicant may access a smartphone, cellphone, or computer to submit an application to the Coast Guard without incurring a cost.[14] Additionally, with this final rule, we assume that a small population of applicants affected by part 10.219(d), who submit applications at RECs currently, will choose to continue to visit RECs and will continue to print receipts as proof of payment. However, the Coast Guard is not able to determine the number of applicants who will continue to visit RECs for this purpose. Therefore, there is an unquantifiable cost of the final rule with printing the receipts for a small number of applicants who visit RECs to submit their applications. This results in a small, unknown reduction in the total estimated cost savings of this rule.

Applicants may visit an REC for many reasons; for example, to take an examination, to ask questions about the application process, submit an application, pay the mandatory fees, obtain an oath from an authorized individual, or for other reasons. This is notable in the following cost savings analysis because the Coast Guard does not include travel cost savings estimates for the affected applicants in our analysis of the impact of the change to § 10.219(d). The Coast Guard reasons that, although it is possible for applicants to visit RECs exclusively to pay MMC fees, the Coast Guard does not retain data on the number of applicants who do so. In practice, the Coast Guard assumes applicants do not visit an REC to solely pay the fees. Therefore, the Coast Guard cannot attribute travel costs to applicants who pay the mandatory fees in person at an REC. For example, applicants may visit RECs to ask questions about the application process and may decide to pay the fees during the same visit. Or applicants may visit RECs to obtain an oath, not realizing that RECs accept in-person payment, and may decide to pay the fees during this visit. The Coast Guard also assumes that applicants pay the mandatory fees at one time.

The requirement for applicants to pay MMC fees electronically through *Pay.gov* eliminates the flexibility to pay these fees by cash, and money order, by standard mail, and directly at an REC (see footnote number 13). However, with *Pay.gov*, the Coast Guard believes applicants will find this payment method to be more convenient and secure because applicants are able to pay MMCs fees from their home instead of traveling to an REC and expending the time and money by making a payment in person, as we discuss later in this analysis. The Coast Guard acknowledges that there may be a small subset of the applicant population that still prefer to pay MMC fees in person instead of through *Pay.gov* after an effective final rule.

The Coast Guard collects data for all payment transactions including transactions for original MMC applications. Between 2015 and 2019, the Coast Guard recorded an annual average of 1,167 credit card transactions for original applications made in person by applicants at an REC. It also recorded an average annual of 8,791 credit card transactions for other fees for a total average annual of 9,958 credit card transactions over these 5 years. During the same period, the Coast Guard recorded an average annual of 39 cash payment transactions for original applications made in person by applicants at an REC. It also recorded an average annual of 252 cash transactions for other fees for a total average annual of 291 cash transactions for these 5 years. Therefore, the total average annual number of transactions made in person was approximately 10,249 over the 5-year time period.

The NMC estimates it takes applicants approximately 5 minutes, or 0.083 hours (rounded), to complete a payment through *Pay.gov*. The NMC estimates it takes a certain amount of time for applicants to make in-person application payments at an REC. For applicants who pay by credit card, the NMC estimates it takes approximately:

- 8 minutes, or approximately 0.13 hours (rounded), to enter RECs due to security checks;
- 3.5 minutes, or approximately 0.06 hours (rounded) to wait in line for a clerk; and
- 7.5 minutes, or approximately 0.13 hours (rounded) to make the payment and complete the transaction, for a total of approximately 0.32 hours.

Therefore, the net amount of time (time difference) applicants save by making payments electronically rather than by credit card in person is approximately 0.237 hours (0.32–0.083 hours).

For applicants who pay by cash, the NMC estimates it takes approximately:

- 8 minutes, or approximately 0.13 hours (rounded) to enter RECs due to security checks;
- 3.5 minutes, or approximately 0.06 hours (rounded) to wait in line for a clerk; and
- 6.0 minutes, or approximately 0.10 hours to make the payment and complete the transaction, for a total of approximately 0.29 hours.

Therefore, the net amount of time applicants save from making payments electronically rather than making cash payments in person is approximately 0.207 hours (0.29–0.083 hours).

The payment time we used for *Pay.gov* does not account for the time to create a personal account on *Pay.gov*. Individual payments may be made without creating an account. *Pay.gov* provides the same capabilities to pay credentialing and other fees and obtain a receipt without creating an account. For this analysis, the Coast Guard assumes individuals will not create an account because credentialing fees are typically paid only once every five years, which aligns with the validity

---

cost savings) to obtain these cards in this analysis because applicants can obtain these cards when they are at grocery stores or other locations without making a separate trip to specifically obtain the cards. In this analysis, we assume for the unknown number of applicants who choose to use a prepaid card to pay fees, already possess the card.

[12] U.S. Census Bureau, American Community Survey 2022, S2801 Types of Computers and internet Subscriptions: ACS 1-year Estimates Subject Tables, Types of Computers, *https://data.census.gov/table/ACSST1Y2022.S2801?q=internet* access. The Coast Guard accessed this web page in May 2024. The Census Bureau will release 2023 data in September 2024. Readers can verify this information at, *https://www.census.gov/programs-surveys/acs/news/data-releases/2023/release.html* (''2023 Data Release New and Notable'' (*census.gov*)). The Coast Guard accessed this web page in May 2024.

[13] See footnote 15.

[14] The Coast Guard acknowledges that there may be a small portion of applicants in the affected population who may not own a computer or have access to the internet to submit a MMC payment. Readers can access these websites for further information on access to the internet and the ownership of mobile phones in the United States: *https://www.pewresearch.org/internet/fact-sheet/internet-broadband/* and *https://www.pewresearch.org/internet/fact-sheet/mobile.* The Coast Guard accessed these web pages in May 2024.

period of an MMC. Using *Pay.gov* infrequently does not necessitate the need to create an account.

Anyone meeting the citizenship requirement under 46 CFR 10.221 and of an eligible age can apply for an MMC, regardless of their current employment status. For this regulatory analysis, the Coast Guard assumed applicants for an original MMC are currently employed (this is for original applications where an oath is currently required); this allows the Coast Guard to construct a cost savings analysis, because we can then obtain applicants' wage rates, the labor time, and the cost savings associated with the removal of the in-person payment option.

Additionally, because the Coast Guard does not know the current occupations of individuals who apply for an original MMC and pay fees in person at an REC, the Coast Guard used the Bureau of Labor Statistics' (BLS) ''Occupational and Employment Statistics'' database and May 2023 wage estimates to obtain the general occupational code (BLS code 00–0000) for all civilian workers in the U.S., which is the largest occupational category of workers the Coast Guard found at BLS' website.[15] The unloaded mean hourly wage rate for this occupational category is $31.48. The Coast Guard does not collect employment data on applicants; nevertheless, the Coast Guard acknowledges that the assumption of employment may lead to an overestimation of cost savings for the final rule.

Because fees are also paid in person at an REC mostly by applicants other than original applicants, the Coast Guard used the BLS occupational category, Water Transportation Workers (BLS code 53–5000) to obtain the unloaded mean hourly wage rate for all applicants who pay fees in person at RECs. The unloaded mean hourly wage rate in 2023 for this occupational category is $38.00.

Because the Coast Guard used different occupational categories, this required us to use two load factors to obtain an average load factor.

To obtain a loaded mean hourly wage rate for civilian workers, the Coast Guard used BLS' ''Employer Costs for Employee Compensation'' database to calculate the load factor for this group of workers in the U.S. The Coast Guard used the same database to obtain a load factor for the occupational category of Water Transportation Workers. The Coast Guard then used the average load factor for these two groups of workers in the U.S. The Coast Guard applied the load factor to the average unloaded mean hourly wage rate using fourth quarter data from 2023 for all applicants. The Coast Guard determined the average load factor for the two occupational categories to be about 1.45, rounded.[16] The Coast Guard then multiplied this average load factor by the unloaded mean hourly wage rate for applicants, who pay fees in person at RECs, and obtained a loaded mean hourly wage rate of approximately $55.10, rounded ($38.00 × 1.45).

Applicants (including original applicants) who currently pay the fees by credit card at an REC are required to pay them electronically using *Pay.gov* under this final rule. This affects approximately 9,958 applicants annually. The Coast Guard estimates the undiscounted cost for these applicants to be approximately $45,541 annually (9,958 × $55.10 × 0.083 hours), rounded. The Coast Guard estimates the undiscounted baseline cost for applicants who currently pay the fees by credit card in person at an REC to be approximately $175,580 annually (9,958 × $55.10 × 0.32 hours), rounded. Therefore, the Coast Guard estimates the undiscounted net cost savings to applicants who currently pay the fees in-person by credit card and are now required to pay them electronically through *Pay.gov* to be approximately $130,039 annually ($175,580 − $45,541), rounded.

Similarly, applicants (including original applicants) who currently pay the mandatory fees by cash at an REC are required to pay them electronically using *Pay.gov* under this final rule. This affects approximately 291 applicants annually. The Coast Guard estimates the undiscounted cost for these applicants to be approximately $1,331 annually (291 × $55.10 × 0.083 hours). The Coast Guard estimates the undiscounted baseline cost for applicants who currently pay the fees by cash in person at an REC to be approximately $4,650 annually (291 × $55.10 × 0.29 hours), rounded. Therefore, the Coast Guard estimates the undiscounted net cost savings to applicants who currently pay the fees by cash and will need to pay them electronically through *Pay.gov* to be approximately $3,319 annually ($4,650 − $1,331), rounded. The Coast Guard estimates the total undiscounted net cost savings for 10,249 (9,958 by credit card + 291 by cash) applicants who currently pay the mandatory fees in-person by credit card and cash and will need to pay them electronically through *Pay.gov* to be approximately $133,358 annually ($130,039 by credit card + $3,319 by cash), rounded. See table 4.

[15] The BLS defines civilian workers to be ''private industry workers and State and local government workers.'' This includes individuals in the private nonfarm economy excluding households and the public sector excluding the Federal Government. Readers can view BLS' glossary of terms at *https://www.bls.gov/bls/glossary.htm*. Readers can access BLS' website at: May 2023 National Occupational Employment and Wage Estimates (*bls.gov*) to obtain information about the wages used in this analysis. The Coast Guard accessed BLS' web page in May 2024.

[16] A loaded mean hourly wage rate is what a company pays per hour to employ a person, not the hourly wage an employee receives. The loaded mean hourly wage rate includes the cost of non-wage benefits (health insurance, vacation, etc.). The Coast Guard calculated the load factor by accessing BLS' website at *https://www.bls.gov/* and selecting the topic ''Data Tools'' from the menu on this web page. Under this menu item, the Coast Guard selected the category ''Top Picks, One Screen, Multi-Screen, and Maps.'' On the next page titled, ''Databases, Tables, and Calculators by Subject,'' the Coast Guard selected used the category ''Pay and Benefits''. Under the category, ''Employer Costs for Employee Compensation'', we selected the ''Multi-Screen'' feature. This took us to *https://data.bls.gov/cgi-bin/dsrv?cm*. At this page titled, ''Create Customized Tables'', or screen 1, the Coast Guard then selected the category of ''Civilian Workers''. At screen 2, the Coast Guard first selected the category ''Total Compensation,'' then we continued to select ''All Workers'' at screens 3, 4, and 5. At screen 6, for ''Area'' the Coast Guard selected ''United States.'' At screen 7, the Coast Guard selected the category ''Cost of Compensation.'' At screen 8, the Coast Guard selected the category ''not seasonally adjusted.'' At screen 9, the Coast Guard selected the series ID, CMU1010000000000D. The Coast Guard used the ''Cost of Compensation'' for quarter 4 of 2023, or $45.42. The Coast Guard performed this process again to obtain the value for ''Wages and Salaries,'' which we selected on screen 2. On screen 9, the Coast Guard selected the series ID CMU1020000000000D and obtained a value of $31.29. The Coast Guard divided $45.42 by $31.29 and obtained a load factor of 1.45, rounded. The Coast Guard used the same methodology to obtain the load factor for the occupational category for applicants other than original applicants. However, instead of using the category of ''Civilian Workers'', the Coast Guard selected ''Private Industry Workers'' at screen 1, ''Total Compensation'' at screen 2, ''Transportation and Material Moving Occupations'' at screen 3, ''All Workers'' at screens 4 and 5, ''United States'' at screen 6, ''Cost of Compensation'' at screen 7, ''not seasonally adjusted'' at screen 8, and the series ID at screen 9, CMU 2010000520000D. The Coast Guard again used the ''Cost of Compensation'' for quarter 4 of 2023, or $34.43. The Coast Guard then selected ''Wages and Salaries,'' at screen 2. On screen 9, the Coast Guard selected the series ID CMU2020000520000D and obtained a value of $23.89. The Coast Guard divided $34.43 by $23.89 and obtained a load factor of 1.44, rounded. The Coast Guard then used the average of these two load factors, which is 1.45, rounded. The Coast Guard accessed this BLS' website in May 2024.

Table 4. Summary of Undiscounted Cost Savings for Applicants Who Currently Pay in Person at an REC and use Pay.gov with Final Rule, 2023 Dollars

Current In-Person Transactions		
Item	**Credit Card Users**	**Cash Users**
Loaded Wage Rate	$55.10	$55.10
Population	9,958	291
Time Estimate	0.32	0.29
Cost Estimate	$175,580	$4,650
In-Person Transactions Made With Pay.gov		
Item	**Credit Card Users**	**Cash Users**
Wage Rate	$55.10	$55.10
Population	9,958	291
Time Estimate	0.083	0.083
Cost Estimate	$45,541	$1,331
Net Cost Savings	**$130,029**	**$3,319**
Total Annual Cost Savings	**$133,358**	

Note: Totals may not sum due to independent rounding.

Lastly, the final rule creates cost savings for applicants, other than original applicants, who paid mandatory fees by check or money order in the past and mailed the payment to the Coast Guard through standard mail, or USPS. Over the 7-year period from 2015 to 2021, the Coast Guard recorded an annual average of 12,638 payments (10,146 by check and 2,492 by money order) where an applicant used a check or money order. Because this regulatory analysis is in 2023 dollars, the cost of a forever stamp from the USPS in 2023 was $0.63.[17] With this final rule, applicants will be able to use a check or money order to make mandatory fee payments with *Pay.gov*; however, payments made by check must be made with an ACH payment and for money orders, a prepaid card (see footnote number 15). The Coast Guard did not estimate cost savings for applicants who currently mail checks or money orders to the Coast Guard and will be required to use *Pay.gov* because we do not estimate that there is a time difference between these two payment methods and *Pay.gov*. The total undiscounted cost for these payment types is approximately $7,962 annually, rounded. The final rule creates cost savings in the same amount annually. The Coast Guard estimates the total 10-year discounted cost savings for applicants who can no longer mail a check or money order (cost savings are from the cost of a forever stamp) to pay for mandatory fees to be approximately $55,921, rounded, using a 7 percent discount rate. The Coast Guard estimates the annualized cost savings to be approximately $7,962, rounded, using a 7-percent discount rate.

In table 5, the Coast Guard presents the 10-year discounted cost savings to applicants who currently paid the fees in person and are required to pay them electronically under this final rule, and applicants who paid the fees by check or money order and sent their payments by standard mail to the Coast Guard. The Coast Guard estimates the total undiscounted cost savings for the electronic payment of fees by applicants to be approximately $141,320 annually, rounded ($133,358 from in-person payments + $7,962 from mailed checks and money orders). The Coast Guard estimates the total discounted 10-year cost savings for these applicants to be approximately $1.0 million, rounded, using a 7-percent discount rate. The Coast Guard estimates the annualized cost savings to be approximately $141,320, rounded, using a 7-percent discount rate.

[17] Readers can access USPS' website at *https://www.usps.com* to find past postal rates or search online for USPS' ''Postal News'' or ''USPS Forever Stamps Postage Rate 2023''.

Table 5. Estimated Cost Savings of Final Rule to Applicants Who use Pay.gov (2023 Dollars, 10-year Period of Analysis, 7- and 3-Percent Discount Rates)

Year	Net Cost Savings from Cash and Credit Card Payments	Cost Savings from Check and Money Order	Total Cost Savings to use Pay.gov	7 Percent	3 Percent
1	$133,358	$7,962	$141,320	$132,074	$137,203
2	$133,358	$7,962	$141,320	$123,434	$133,207
3	$133,358	$7,962	$141,320	$115,359	$129,327
4	$133,358	$7,962	$141,320	$107,812	$125,561
5	$133,358	$7,962	$141,320	$100,759	$121,903
6	$133,358	$7,962	$141,320	$94,167	$118,353
7	$133,358	$7,962	$141,320	$88,007	$114,906
8	$133,358	$7,962	$141,320	$82,249	$111,559
9	$133,358	$7,962	$141,320	$76,868	$108,310
10	$133,358	$7,962	$141,320	$71,840	$105,155
Total	-	-	-	$992,569	$1,205,484
Annualized				$141,320	$141,320

Note: Totals may not sum due to independent rounding.

Federal Government Cost Savings for the Change to § 10.219(d)

This final rule creates cost savings for the Coast Guard in the amount of time that is saved by REC personnel who no longer process in-person payment transactions. The NMC estimates it takes fee clerks at an REC approximately 5 minutes, or 0.083 hours (rounded), to process credit card payments. Similarly, the NMC estimates it takes mandatory fee clerks approximately 25 minutes, or 0.42 hours (rounded), to process cash payments. This includes the processing time the fee clerk takes to go to a bank and obtain a money order in order to complete the payment transaction. There is no difference in the time it takes for a fee clerk at an REC to process a check mailed to the Coast Guard and the time it would take with this final rule to process an ACH payment. There is also no difference in the time it takes for a fee clerk to process a money mailed to the Coast Guard and the time it takes with this final rule to process a prepaid card used from a money order. Therefore, the Coast Guard does not estimate cost savings for the Federal Government from not processing checks and money orders mailed to the Coast Guard by applicants.

A fee clerk at an REC has a Federal Government General Schedule (GS) grade level of GS–5. The Office of Personnel Management (OPM) lists the hourly pay for Federal Government employees who work in the United States.[18] Because RECs are geographically dispersed across the U.S., the Coast Guard used the hourly wage rate for the category ''Rest of the United States'' from OPM's pay tables. OPM reports the hourly pay for a person with the grade level of a GS–5, step 5 (the midpoint of the pay level) as $20.47 in 2023. The Coast Guard calculated the share of total compensation of Federal Government employees to account for the non-wage benefits to determine the load factor that the Coast Guard applied to the hourly wage rate of employees. In a Congressional Budget Office (CBO) report titled ''Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015,'' the CBO reports total compensation of Federal Government employees to be approximately $64.80, and wages and salaries to be approximately $38.30.[19] From these values, the Coast Guard determined the load factor to be about 1.69, rounded ($64.80 ÷ $38.30). The Coast Guard then multiplied this value by the hourly wage rate of $20.47 to obtain a loaded hourly wage rate of $34.59, rounded, for a GS–5, step 5 fee clerk at an REC.

The Coast Guard estimates the baseline undiscounted cost for REC fee clerks to process credit card transactions to be approximately $28,589 annually, rounded ($34.59 × 9,958 credit card transactions annually × 0.083 hours). The Coast Guard estimates the baseline undiscounted cost for REC payment clerks to process cash transactions to be approximately $4,228 annually, rounded ($34.59 × 291 cash transactions annually × 0.42 hours). Because RECs no longer accept in-person payments with this final rule, these costs combined become cost savings to the Coast Guard of approximately $32,817 annually, rounded ($28,589 + $4,228). See table 6.

[18] Readers can view the General Schedule of salaries for Federal Government employees at *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/html/RUS_h.aspx*. The Coast Guard accessed this web page in May 2024.

[19] Readers can view the report at, *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf*. See pages 16 and 11 of the report, respectively. The Coast Guard accessed this report in May 2024.

Table 6. Summary of Estimated Annual Undiscounted Cost Savings to the Coast Guard from the Change to § 10.219(d), 2023 Dollars

Applicants' Payment Type	Estimate of Time Saved (hours)	Wage Rate	Cost Savings Estimate
Credit Card Payment	0.083	$34.59	$28,589
Cash Payment	0.42	$34.59	$4,228
Total Annual Cost Savings			**$32,817**

In table 7, the Coast Guard estimates the total discounted 10-year cost savings of this final rule to the Coast Guard to be approximately $230,491 rounded, using a 7-percent discount rate. The Coast Guard estimates the annualized cost savings to be approximately $32,817, rounded, using a 7-percent discount rate.

Table 7. Estimated Cost Savings to the Coast Guard from the Change to § 10.219(d) (2023 Dollars, 10-year Period of Analysis, 7- and 3-Percent Discount Rates)

Year	Cost Savings	7 Percent	3 Percent
1	$32,817	$30,670	$31,861
2	$32,817	$28,663	$30,933
3	$32,817	$26,788	$30,032
4	$32,817	$25,036	$29,157
5	$32,817	$23,398	$28,308
6	$32,817	$21,867	$27,483
7	$32,817	$20,437	$26,683
8	$32,817	$19,100	$25,906
9	$32,817	$17,850	$25,151
10	$32,817	$16,682	$24,419
Total	-	$230,491	$279,933
Annualized		$32,817	$32,817

Note: Totals may not sum due to independent rounding.

Cost Savings Analysis for the Change to § 10.225(c), Removal of the Oath Requirement

The Coast Guard removes the current requirement in § 10.225(c) for applicants for an original MMC to take an oath administered by any Coast Guard-designated individual or any person legally permitted to administer oaths in the jurisdiction where the person taking the oath resides. Typically, if an oath is not administered by a designated Coast Guard official, it is administered by a notary public.[20] When an individual applies for an MMC, the individual must complete Form CG–719B. They must either submit this form by email, in person, or send it by standard mail to an REC.[21] Currently, if applicants use a notary public to administer their oath, the notary must sign the form along with the applicant. The signature of the applicant is a testament to the validity and accuracy of the information the individual is providing to the Coast Guard and is an attestation to the statements in Section 4, ''Mariner's Consent/Certification,'' of the form.

With this final rule, original applicants no longer need the signature

[20] An oath an original applicant must take is a pronouncement that an original applicant will abide by the rules and regulations aboard a vessel, faithfully execute his or her duties, and obey the superior officers of the vessel.

[21] This form is part of a currently-approved OMB ICR with a control number 1625–0040 and a title of ''Applications for Merchant Mariners Credentials and Medical Certificates.'' Readers can access NMC's website at *https://www.dco.uscg.mil/national_maritime_center/* to view this form and obtain information about the application process. The Coast Guard accessed this web page in August 2024.

of the notary public on Form CG–719B. However, applicants will still need to sign the form, which alone is sufficient for Form CG–719B.

Currently, applicants for an original MMC who submit their application in person at an REC can also take the oath there. There is no cost to original applicants who take the oath before a designated official at an REC and therefore, no cost savings. However, original applicants, who do not visit an REC to submit their application, will need to seek the service of a notary public elsewhere.

Original applicants can obtain notary public service at a bank or another location where there are notary public services. The Coast Guard assumes there is no cost for a notary public service at a bank if an individual has a bank account there. Other establishments that provide legal services may also provide notary public services, in addition to State and local Government offices, including shipping companies.[22] However, these offices and establishments usually charge for the public notary service.

Therefore, as mentioned previously in this RA, the Coast Guard presents two assumptions that will each generate different cost savings estimates for the change to § 10.225(c). With each assumption, the Coast Guard assumes all applicants who apply for an original MMC are currently employed:

- Assumption 1—Approximately 13,951 individuals who applied for an original MMC and took an oath before a designated official who administers the oath, or a notary public at a bank where they have an account free of charge.
- Assumption 2—Half the individuals, or approximately 6,976, who applied for an original MMC took an oath along with a notary public service at a bank, and half obtained an oath elsewhere (perhaps at a state office or an establishment that provides legal services including notary public services), where a cost is associated with the notary public service.

Earlier in this analysis, the Coast Guard established that one payment transaction represents one original application with one oath. Presumably, original applicants seek a notary public service at a bank, where it is free of charge; this is our basis for Assumption 1. However, because the Coast Guard does not have data on where original applicants obtained an oath along with a notary public service, it is possible that a certain number of original applicants obtained an oath along with a notary public service outside of a bank; this is our basis for Assumption 2. As such, the Coast Guard divided the population evenly in Assumption 2.

With the Coast Guard's assumption that original applicants who apply for MMCs are employed, this allows us to estimate the cost savings associated with the change to § 10.225(c) as we did for the change to § 10.219(d). Because original applicants who apply for MMCs are members of the general public and not yet mariners, the Coast Guard does not collect data on where these original applicants reside. Therefore, the Coast Guard does not know where original applicants reside relative to the location of banks or bank branches, or other establishments that offer notary public services. This required the Coast Guard to estimate the approximate distance original applicants travel to get to a bank branch for Assumption 1, so the Coast Guard is able to estimate the cost savings for them, because they no longer need to travel to a bank branch to obtain a notary public service. To perform this analysis, the Coast Guard required several pieces of information to determine the distance original applicants must travel to a bank or bank branch (and a notary public service in Assumption 2):

1. The number of bank branches in the United States;
2. The total U.S. population and the U.S. adult population; and
3. The number of square miles of the United States.

The St. Louis Federal Reserve Bank compiles and reports U.S. economic data (Federal Reserve Economic Data, or ''FRED''). One of the data items it reports is the number of bank branches in the United States. FRED shows that there are 30.46 bank branches per 100,000 adults in the United States.[23]

The U.S. Census Bureau in the U.S. Department of Commerce reports population data for the United States. As of July 1, 2023, the U.S. Census Bureau estimates the U.S. population to be approximately 334,914,895.[24] The U.S. Census Bureau reports the number of individuals below the age of 18 to be 21.7 percent of the total U.S. population.[25] Therefore, the number of adults in the United States (individuals who are 18 years of age or older) is approximately 262,238,363, rounded $((1-0.222)\times 334{,}914{,}895)$. The Coast Guard divided this population by 100,000 to normalize the value to 100,000 (so it can be scaled to and combined with FRED's data) and obtained the value of approximately 2,622 (rounded).

To determine the number of bank branches for every adult in the U.S., the Coast Guard multiplied 30.46 (number of bank branches) by 2,622 to obtain approximately 79,866 (rounded) bank branches.

Finally, as of 2023, the U.S. Census Bureau's Quick Facts shows the number of square miles in the United States to be 3,533,038, rounded.[26] The Coast Guard then divided this value by 79,866 bank branches to obtain the number of bank branches per square mile in the United States, or approximately one bank branch for every 44 square miles, or an area of 6.7 by 6.7 miles.[27] This is equivalent to approximately one bank branch every 6.7 miles.[28] The Coast

[22] The Coast Guard acknowledges that Credit Unions, similar to banks in the U.S., may also offer notary public services, free of charge, for its members.

[23] Readers can access the St. Louis Federal Reserve's ''FRED'' website at *https://fred.stlouisfed.org/#*. At this page, readers should use the search feature and type the words ''bank branches'' in the search field. The resulting web page will show a graph of the data and the value that the Coast Guard used for this analysis. The Coast Guard accessed this web page in May 2024. With the acknowledgement that Credit Unions also offer notary public services (see footnote number 15), the Coast Guard did not include them in this analysis because the National Credit Union Administration (NCUA) reports the total number of Federally-insured Credit Unions in its ''Quarterly Credit Union Data Summary 2023 Q4'' in the United States (4,604 as of December 31, 2023) and not per a certain population or certain group of individuals as FRED reports it. Therefore, the Coast Guard cannot simply add the NCUA's number to FRED's number because we would be combining incongruent data. Readers can view this report at *https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2023-Q4.pdf*. The Coast Guard accessed this website in May 2024. Readers should also note that the number of bank branches has been in decline since 2000. See the first link to the report by the Federal Reserve Bank of Cleveland in footnote number 31.

[24] For more information on U.S. census statistics and estimates, readers can access the U.S. Census Bureau's website at *https://www.census.gov/quickfacts/fact/table/US/PST045222*. The Coast Guard accessed this web page in May 2024.

[25] ibid.

[26] ibid.

[27] We base this estimate on the information presented in this RA. The actual number of bank branches in the U.S. may be less than this amount. Readers may refer to this source for an alternate estimate, *https://www.bankbranchlocator.com*. The Coast Guard accessed this web page in May 2024.

[28] The Federal Reserve Bank of Cleveland reports the average distance to a bank branch in urban and rural areas of the United States to be about 1.5 miles and 4.3 miles, respectively, in 2020 (an average of about 2.9 miles combined), which is significantly less than the distance we calculated in this analysis. Readers can view the Cleveland Federal Reserve's report at this link, ''Has Bank Consolidation Changed People's Access to a Full-Service Bank Branch?'' (clevelandfed.org). In a working paper by the Federal Reserve Bank of Chicago, it reports the median distance traveled to a bank branch to be 5 miles on page 16 of the paper. Readers can view this paper at *https://www.chicagofed.org/-/media/publications/working-papers/2023/wp2023-15.pdf?sc_lang=en*. The Coast Guard accessed these links in July 2023.

Guard acknowledges that this methodology may not be completely representative of the geographic distribution of bank branches in the United States (the distribution of bank branches may change in the future considering the steady decline in its numbers, particularly since 2010); the distance we estimated is an approximation based on the known statistics we present in this analysis from different sources. Table 8 outlines the inputs used in these calculations.

Table 8. Summary of Inputs for the Change to § 10.225(c)

Inputs	Values
Number of bank branches in the United States	30.46 (per 100,000 adults)
U.S. population	334,914,895
U.S. adult population (18 or older)	262,238,363
Number of square miles in the United States (land area)	3,533,038
Number of bank branches in the United States	79,866
Number of square miles per bank branch (and notary public service)	44

For this analysis, the Coast Guard assumed that 13,951 original applicants travel the same distance of 6.7 miles to obtain a notary public service at a bank or bank branch. Using these data and assumptions, it is possible to construct a cost savings analysis based on the original applicants' travel time to a bank branch to obtain the service of a notary public.

The population of original applicants applying for an MMC who seek notary public services outside of an REC is approximately 13,951 annually (see Table 3). The Coast Guard does not collect data on how original applicants travel to a bank or a notary public service and acknowledges that original applicants can choose among different modes of transportation, including walking or taking public transportation, to do so. However, for the purpose of this analysis, the Coast Guard assumed original applicants use their personal vehicles to accomplish this task, which allows the Coast Guard to estimate the travel cost for original applicants.

To construct this analysis for Assumptions 1 and 2, the Coast Guard assumed that 13,951 original applicants travel approximately 6.7 miles one way or about 13.4 miles round-trip to an establishment that has a notary public service. See table 9.

Table 9. Summary of Travel Distance for Original Applicants Who Obtain the Service of a Notary Public at a Location Other than an REC (for example, a Bank)

Number of Original Applicants	Distance Traveled One Way (miles)	Distance Traveled Round Trip (miles)
13,951	6.7	13.4

The Coast Guard shows the cost-saving elements for Assumption 1 and 2 in table 10. The Coast Guard estimated that the 13,951 original applicants affected by the change to § 10.225(c) save the travel time or labor cost for travel (the value of travel time savings or VTTS), the mileage cost, and the cost of time waiting at a bank or a notary public service.[29] The Coast Guard included these cost savings in both Assumption 1 and 2.

Under Assumption 2, half of these original applicants, or about 6,976, also save the cost of the time it takes to complete a payment transaction, either by credit card or by cash, at a notary public service. The Coast Guard assumed half of these original applicants currently pay by credit card and half by cash, for about 3,488 original applicants choosing each payment method.

The Coast Guard acknowledges that there is a greater concentration of banks and establishments with notary public services in urban and metropolitan areas of the United States. Additionally, considering that the population density of urban areas is greater than in rural areas, it is likely that the population of original applicants is higher in urban areas than in rural areas of the United States. Therefore, it is likely that a

[29] The Department of Transportation (DOT) has guidance on VTTS for individuals who use different modes of travel in the United States. The VTTS is divided into two categories, local and intercity travel. See table 1 on page 13 of the memorandum. Within these two categories, there are two subcategories, personal and business travel, in the first column of the table. Based on SME input from the NMC, applicants will most likely obtain an oath on their personal time. Therefore, we used the category, local personal travel. In the second column of the table, the Coast Guard used the category ''surface modes (except high-speed rail)''. Therefore, we used the value of 50 percent of the mean hourly wage rate for the VTTS. Readers can access DOT's memorandum at *https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-valuation-travel-time-economic.* At this link, to access the memorandum, readers should select the pdf document titled, ''2016 Revised Value of Travel Time Guidance.pdf''. The Coast Guard accessed this link in July 2023.

greater proportion of original applicants who apply for MMCs reside in urban and metropolitan areas and may travel shorter distances to reach these places, which will result in lower cost savings than the Coast Guard estimated in this analysis. Nevertheless, this analysis represents an analysis of averages because the Coast Guard does not know where original applicants who apply for MMCs reside. The Coast Guard acknowledges that bank branches (and notary public services) are not equally distributed in the United States; the travel distance of 6.7 miles we estimated in this analysis is an approximate distance to a bank branch or notary public service; the travel distance may vary for some applicants who reside in suburban and rural areas of the United States.

Table 10. Applicable Cost-saving Elements for Assumptions 1 and 2 for the Change to § 10.225(c)

Cost Savings Element	§ 10.225(c) Assumption 1	§ 10.225(c) Assumption 2
Travel time	Yes	Yes
Mileage cost savings	Yes	Yes
Waiting time at bank branch	Yes	Yes
Waiting time at notary public service	No	Yes
Time for payment transaction at notary public service	No	Yes
Cost of notary public service	No	Yes

In addition to the two main assumptions for the change to § 10.225(c) that the Coast Guard presented earlier, we present a summary of the other assumptions (some of which we may have presented earlier in the analysis), that we included in the analysis for Assumptions 1 and 2:

1. Original applicants for an MMC are currently employed in another occupation;
2. Affected original applicants live approximately 6.7 miles from a bank branch or notary public;
3. Affected original applicants travel an equal distance of 6.7 miles to a bank branch or a notary public service;
4. The wait times and payment transaction times at bank branches and notary public are the same as wait times at an REC; and
5. Original applicants use their privately-owned vehicle to travel to a bank branch or a notary public service.

Cost Savings Analysis for Assumption 1 for the Change to § 10.225(c)

With Assumption 1, the Coast Guard assumed 13,951 original applicants currently obtain a notary public service for the purpose of the oath at a bank, where there is no charge for the service if original applicants have an account at the bank. Because the Coast Guard does not know where original applicants live in proximity to the location of bank branches, the Coast Guard assumed all 13,951 original applicants travel about 6.7 miles one-way or about 13.4 miles round-trip to a bank branch. Under this assumption, 13,951 original applicants save the labor travel time or VTTS, the mileage cost, and the time waiting at a bank branch to obtain a notary public signature on Form CG–719B under this final rule.[30]

[30] For this analysis, the Coast Guard did not account for the time it will take an applicant to park at a bank branch or notary public service.

To obtain the time it takes to travel this distance, the Coast Guard first accessed the Department of Transportation's (DOT) website to access the National Highway Traffic Safety Administration's (NHTSA) web page to obtain the mean road speeds on all roads.[31] The 2015 report shows the free-flow speed estimates (mph) for three road classes: limited access, major arterial, and minor arterial roads/collector roads. The Coast Guard used the mean speed for the minor arterial/collector road class, which may be more representative of roads used by applicants. NHTSA estimates the mean speed for minor arterial/collector roads to be about 49.73 miles per hour (mph).[32] The Coast Guard then divided the distance of about 6.7 miles (one way) by 49.73 mph to obtain the time it takes to travel this distance, or approximately 0.13 hours, rounded. The Coast Guard then divided the round-trip distance of about 13.4 miles by 49.73 mph to obtain the time it takes to travel this distance, or approximately 0.27 hours, rounded. The Coast Guard recognizes that an unknown portion of applicants, who live in urban areas, may travel at lower speeds than applicants in suburban and rural areas of the United States to get to a bank branch or notary public service. As a result, travel speeds may be lower than the 49.73 mph speed we estimated in this regulatory analysis.

With this information, the Coast Guard then calculated the labor cost for all original applicants who currently expend the time to travel this distance to obtain a notary public service. Earlier, the Coast Guard established the loaded mean hourly wage rate for original applicants who apply for an MMCs to be approximately $45.65 (recall that this labor rate is for original applicants who need to take an oath; it is different than the labor rate for the mandatory fee portion of this analysis). Using the value of 50 percent for the VTTS for personal time (see footnote number 32), the Coast Guard calculated the labor cost for the time to travel the 13.4-mile round-trip distance for one original applicant to be approximately $6.16 ($45.65 × 0.50 × 0.27 hours). Therefore, the Coast Guard estimates the total undiscounted labor travel time cost or VTTS, for 13,951 original applicants to be approximately $85,938 annually, rounded (13,951 original applicants × $6.16). Next, the Coast Guard calculated the mileage cost for these original applicants to travel the round-trip distance. The Coast Guard used the General Services Administration's (GSA) reimbursement rates for original applicants who use their privately-owned vehicles.[33] The GSA reports the rate per mile to be $0.655 for calendar year 2023. Using the round-trip distance of 13.4 miles, the Coast Guard estimates the cost for one individual to make this trip to be approximately $8.78, rounded (13.4 miles × $0.655). The Coast Guard estimates the total undiscounted travel or mileage cost for 13,951 original applicants to be approximately $122,490 annually, rounded (13,951 original applicants × $8.78).

Lastly, the Coast Guard calculated the waiting time at a bank branch for 13,951 original applicants to obtain a notary public signature on Form CG–719B. Because the Coast Guard assumed that waiting times at RECs is similar to waiting times at bank branches, we used the same waiting time that we used for original applicants who wait to pay the fees at an REC, or approximately 3.5 minutes (readers should refer to the earlier discussion of this estimate), or 0.06 hours, rounded. The Coast Guard estimates the total undiscounted cost for 13,951 original applicants who currently wait at bank branches for a notary public service to be approximately $38,212 annually, rounded (13,951 × $45.65 × 0.06 hours).

The Coast Guard estimates the total undiscounted cost for 13,951 original applicants affected by the changes to § 10.225(c) and who currently travel to bank branches to obtain a free notary public service to be approximately $246,640 annually, rounded ($85,938 + $122,490 + $38,212). This estimate is for Assumption 1 of the analysis. Therefore, in this final rule, the Coast Guard estimates the total undiscounted cost savings to these original applicants, who no longer need to obtain notary public service at bank branches, to be approximately $246,640 annually, rounded. See table 11.

Table 11. Summary of Undiscounted Cost-saving Elements for Assumption 1 for the Change to § 10.225(c), 2023 Dollars

Cost Savings Element	Cost Savings Estimate	Population Affected
Labor Travel Time Cost Savings (VTTS)	$85,938	13,951
Mileage	$122,490	13,951
Waiting Time at Bank Branch	$38,212	13,951
Total Annual Cost Savings	$246,640	-

Note: Readers should not add together the populations in the third column. Totals may not sum due to independent rounding.

[31] At DOT's homepage, under the heading ''Explore DOT,'' the Coast Guard selected the topic ''Roadways and Bridges.'' At this page, under the heading ''Other Associated Agencies,'' the Coast Guard selected the NHTSA link. There is no direct link, so in the search feature, the Coast Guard typed the words ''traffic survey.'' The Coast Guard then selected the link titled ''National Traffic Speeds Survey III: 2015 Traffic Tech.'' One result will appear, or a pdf version of the report that the Coast Guard used in this analysis. Readers can access the report at, *https://www.nhtsa.gov/sites/nhtsa.gov/files/traffic_tech/812489_tt-national-traffic-speeds-survey-iii-2015.pdf.* The Coast Guard accessed this web page in in May 2024.

[32] Readers should view the classification of roadways by DOT's Federal Highway Administration (FHWA) to understand the types of roadways used in DOT's survey found in footnote number 34. The 2013 document describes the classification of roadways by the FHWA and is titled, ''Highway Functional Classification Concepts, Criteria and Procedures'', which readers can find at *https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf.* The Coast Guard accessed this link in July 2023.

[33] To obtain the rates for privately owned vehicles for 2023, at the **Federal Register's** homepage, search for ''Calendar Year (CY) 2023 Privately Owned Vehicle (POV) Mileage Reimbursement Rates''. This will take the reader to a GSA web page, at this page under ''Summary'', select the link, *https://gsa.gov/ftrbulletins.* At the next page, select the bulletin with the date, 12/29/2022. This page contains the mileage rate for POA or privately owned vehicles under item ''3a'' of the bulletin. The Coast Guard accessed this web page in May 2024.

The Coast Guard estimates the total discounted cost savings, under Assumption 1, over a 10-year period of analysis to be approximately $1.7 million, rounded, using a 7-percent discount rate. The Coast Guard estimates the annualized cost savings to be approximately $246,640, rounded, using a 7-percent discount rate. See table 12.

Table 12. Summary of Discounted Cost Savings of the Final Rule under Assumption 1 for § 10.225(c) Only (2023 Dollars, 10-year Period of Analysis, 7-and 3-Percent Discount Rates)

Year	VTTS	Mileage	Waiting Time at Bank Branch	Total Cost Savings	7 Percent	3 Percent
1	$85,938	$122,490	$38,212	$246,640	$230,504	$239,456
2	$85,938	$122,490	$38,212	$246,640	$215,425	$232,482
3	$85,938	$122,490	$38,212	$246,640	$201,331	$225,710
4	$85,938	$122,490	$38,212	$246,640	$188,160	$219,136
5	$85,938	$122,490	$38,212	$246,640	$175,851	$212,754
6	$85,938	$122,490	$38,212	$246,640	$164,346	$206,557
7	$85,938	$122,490	$38,212	$246,640	$153,595	$200,541
8	$85,938	$122,490	$38,212	$246,640	$143,547	$194,700
9	$85,938	$122,490	$38,212	$246,640	$134,156	$189,029
10	$85,938	$122,490	$38,212	$246,640	$125,379	$183,523
Total	-	-	-	-	$1,732,294	$2,103,887
Annualized					$246,640	$246,640

Note: Totals may not sum due to independent rounding.

Cost Savings Analysis for Assumption 2 for the Change to § 10.225(c)

Because the Coast Guard does not collect data on where original applicants obtain a notary public service, with Assumption 2, the Coast Guard assumed half of the original applicants who currently apply for an MMC obtain a notary public service at a bank branch free of charge and half at a notary public, where there is a fee for the service. The half of the affected population who currently obtain a notary public service at a location other than a bank branch under this assumption consists of approximately 6,976 original applicants. As in Assumption 1, 13,951 original applicants travel the same distance of about 6.7 miles one-way or about 13.4 miles round-trip to a bank branch or a notary public service. For the time and the associated labor cost, it does not make a difference if these original applicants travel to a notary public service rather than a bank branch; they still incur the same labor cost for the travel time as in Assumption 1. The Coast Guard estimated earlier this total undiscounted labor cost, or labor travel time cost (VTTS), for 13,951 original applicants to be approximately $85,938 annually, rounded.

Similarly, these original applicants incur a mileage cost. As in Assumption 1, it does not make a difference if they travel to a notary public service rather than a bank branch; they still incur a mileage cost. The Coast Guard estimated earlier the total undiscounted travel or mileage cost, for 13,951 original applicants, to be approximately $122,490 annually, rounded.

Again, as in Assumption 1, 13,951 original applicants incur the cost to wait at a bank branch or a notary public service. The Coast Guard estimates the total undiscounted cost for 13,951 original applicants who currently wait at bank branches or at a notary public service to be approximately $38,212 annually, rounded.

With Assumption 2, the Coast Guard added the cost for half of the original applicants, or about 6,976, who pay for the notary public service outside of a bank branch. Similar to the payment of mandatory fees presented earlier, the Coast Guard assumed original applicants pay for a notary public with either a credit card or cash. For this analysis, the Coast Guard assumed half of the original applicants who currently pay for a notary public pay by credit card and half by cash. For the approximately 3,488 original applicants who currently pay by credit card, the Coast Guard used the same time estimate for this method of payment as we did for the payment of fees earlier, or approximately 0.13 hours (7.5 minutes each). The Coast Guard estimated the total undiscounted cost for these original applicants who currently pay by credit card to be approximately $20,700 annually, rounded ($3{,}488 \times \$45.65 \times 0.13$).

The Coast Guard estimated the time for original applicants who currently pay by cash to be approximately 0.10 hours (6.0 minutes each). For the approximately 3,488 original applicants who currently pay by cash, the Coast Guard estimated the total undiscounted cost to be approximately $15,923 annually, rounded ($3{,}488 \times \$45.65 \times 0.10$).

The last of the five cost elements for Assumption 2 (which are cost-saving elements with this final rule) is the cost for the notary public service itself. The Coast Guard obtained the cost for notary public services in the U.S. from the organization National Notary (*NationalNotary.org*). Readers should

refer to footnote 11 for more information. This organization provides cost data for 2024 for notary public services throughout the United States, including Washington DC and U.S. territories.

The Coast Guard included fees from all 50 states and Washington DC in this analysis.[34] Because the organization provides a fee schedule for verbal oaths, the Coast Guard used these fees as a proxy for the signature of the notary public on Form CG719B. The fee varies from state to state with the lowest amount being $2 and the highest $25. Ten states do not have a fee schedule or do not charge a fee altogether; nevertheless, the Coast Guard took the statistical average of the fees for all 50 states and Washington, DC, for an average amount of approximately $6.16, rounded. Therefore, the Coast Guard estimates the total undiscounted cost for original applicants in this assumption who pay for a notary public service to be approximately $42,970 annually, rounded (6,976 × $6.16).

The Coast Guard estimates the total undiscounted cost for original applicants in Assumption 2 for the changes to § 10.225(c) in this final rule to be approximately $326,232 annually, rounded ($85,938 + $122,490 + $38,212 + $20,700 + $15,923 + $42,970). Therefore, the Coast Guard estimates the total undiscounted cost savings to original applicants who no longer need to obtain a notary public service at bank branches or notary public services to be approximately $326,232 annually, rounded. See table 13.

Table 13. Summary of Undiscounted Cost-saving Elements for Assumption 2 for the Change to § 10.225(c), 2023 Dollars

Cost-savings Element	Unit Inputs	Population Affected	Cost-savings Estimate
Labor Rate of Applicants	$45.65	13,951	-
Labor Travel Time (VTTS)	0.27 hours	13,951	$85,938
Mileage Rate	$0.655 per mile	13,951	$122,490
Waiting Time at Bank Branch and Notary Service	0.06 hours	13,951	$38,212
Payment by Credit Card	0.13 hours	3,488 of 6,976	$20,700
Payment by Cash	0.10 hours	3,488 of 6,976	$15,923
Avg. Notary Fee	$6.16	6,976 of 13,951	$42,970
Total Annual Cost Savings	-	-	$326,232

Note: Readers should not add together the populations in the third column of the table. The individual population for each item less than 13,951 is a subset of the total affected population of 13,951. Readers should use the estimated loaded labor rate of $45.65 to obtain the cost savings estimate in the last column of the table, except for the notary fee. Totals may not sum due to independent rounding.

The Coast Guard estimates the total discounted cost savings under Assumption 2 over a 10-year period of analysis to be approximately $2.3 million, rounded, using a 7-percent discount rate. The Coast Guard estimated the annualized cost savings to be approximately $326,232, rounded, using a 7-percent discount rate. See table 14.

[34] National Notary also includes fees for U.S. territories, with the highest amount being $25. The Coast Guard did not include the fees for U.S. territories in this analysis, because we have sufficient national data for this analysis. We used 2024 fee data because National Notary does not list fees for 2023 on its website.

Table 14. Summary of Discounted Cost Savings of the Final Rule under Assumption 2 for § 10.225(c) Only (2023 Dollars, 10-year Period of Analysis, 7- and 3-Percent Discount Rates)

Year	VTTS	Mileage	Waiting Time at Bank Branch or Notary Service	Time to Pay Notary by Cash or Credit Card	Notary Cost	Cost Savings	7 Percent	3 Percent
1	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$304,890	$316,730
2	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$284,944	$307,505
3	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$266,303	$298,549
4	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$248,881	$289,853
5	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$232,599	$281,411
6	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$217,382	$273,214
7	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$203,161	$265,257
8	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$189,870	$257,531
9	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$177,449	$250,030
10	$85,938	$122,490	$38,212	$36,622	$42,970	$326,232	$165,840	$242,748
Total	-	-	-	-	-	-	$2,291,320	$2,782,828
Annualized							$326,232	$326,232

Note: Totals may not sum due to independent rounding.

As noted earlier, the cost savings that the Coast Guard estimated for Assumptions 1 and 2 for the change to § 10.225(c) do not include the cost savings from the change to § 10.219(d). However, in table 1 of this RA, where we present the total cost savings estimates of the final rule, the Coast Guard included the cost savings estimates for the change to § 10.219(d), because the Coast Guard must add the cost savings from § 10.225(c) to the cost savings estimate for § 10.219(d). Also recall that only one of the two main assumptions of this analysis will hold. The Coast Guard presented two different scenarios, because we do not know where affected original applicants currently obtain a notary public service.

For Assumption 1 and including the cost savings estimates from the change to § 10.219(d), the Coast Guard estimates the total undiscounted cost savings of the final rule to be approximately $387,959 annually, rounded ($246,640 from Assumption 1 and § 10.225(c) + $141,320 from § 10.219(d)). The Coast Guard estimated the 10-year total discounted cost savings of the final rule to be approximately $2.7 million, rounded, using a 7-percent discount rate. The Coast Guard estimated the annualized cost savings to be approximately $387,959, rounded, using a 7-percent discount rate. See table 15.

Table 15. Summary of Total Discounted Cost Savings of the Final Rule under Assumption 1 (Includes Cost Savings from §§ 10.225(c) and 10.219(d) (2023 Dollars, 10-year Period of Analysis, 7- and 3-Percent Discount Rates)

Year	§ 10.225(c) Cost Savings	§ 10.219(d) Cost Savings	Total Cost Savings-Assumption 1	7 Percent	3 Percent
1	$246,640	$141,320	$387,959	$362,579	$376,659
2	$246,640	$141,320	$387,959	$338,859	$365,689
3	$246,640	$141,320	$387,959	$316,690	$355,038
4	$246,640	$141,320	$387,959	$295,972	$344,697
5	$246,640	$141,320	$387,959	$276,610	$334,657
6	$246,640	$141,320	$387,959	$258,514	$324,910
7	$246,640	$141,320	$387,959	$241,602	$315,446
8	$246,640	$141,320	$387,959	$225,796	$306,259
9	$246,640	$141,320	$387,959	$211,024	$297,338
10	$246,640	$141,320	$387,959	$197,219	$288,678
Total	-	-	-	$2,724,864	$3,309,371
Annualized				$387,959	$387,959

Note: Totals may not sum due to independent rounding.

Readers should compare the total cost savings estimate and annualized cost savings estimate for the final rule in table 15 with the total cost savings estimate of the final rule for Assumption 1 in table 1.

For Assumption 2 and including the cost savings estimates from the change to § 10.219(d), the Coast Guard estimates the total undiscounted cost savings of the final rule to be approximately $467,552 annually, rounded ($326,232 from Assumption 2 and § 10.225(c) + $141,320 from § 10.219(d)). The Coast Guard estimates the 10-year total discounted cost savings of the final rule for Assumption 2 to be approximately $3.3 million, rounded, using a 7-percent discount rate. The Coast Guard estimates the annualized cost savings to be approximately $467,552, rounded, using a 7-percent discount rate. See table 16.

Table 16. Summary of Total Discounted Cost Savings of the Final Rule under Assumption 2 (Includes Cost Savings from §§ 10.225(c) and 10.219(d) (2023 Dollars, 10-year Period of Analysis, 7- and 3-Percent Discount Rates)

Year	§ 10.225(c) Cost Savings	§ 10.219(d) Cost Savings	Total Cost Savings-Assumption 2	7 Percent	3 Percent
1	$326,232	$141,320	$467,552	$436,964	$453,934
2	$326,232	$141,320	$467,552	$408,378	$440,713
3	$326,232	$141,320	$467,552	$381,662	$427,876
4	$326,232	$141,320	$467,552	$356,693	$415,414
5	$326,232	$141,320	$467,552	$333,358	$403,314
6	$326,232	$141,320	$467,552	$311,550	$391,567
7	$326,232	$141,320	$467,552	$291,168	$380,163
8	$326,232	$141,320	$467,552	$272,119	$369,090
9	$326,232	$141,320	$467,552	$254,317	$358,340
10	$326,232	$141,320	$467,552	$237,680	$347,903
Total	-	-	-	$3,283,889	$3,988,313
Annualized				$467,552	$467,552

Note: Totals may not sum due to independent rounding.

Readers should compare the total cost savings estimate and annualized cost savings estimate for the final rule in table 16 with the total cost savings estimate of the final rule for Assumption 2 in table 1.

Including Federal Government cost savings, the Coast Guard estimates the 10-year total discounted cost savings of the final rule under Assumption 1 to be about $2.96 million ($2,724,864 from table 15 and $230,491 from table 7), rounded, using a 7-percent discount rate. We estimate the annualized cost savings to be approximately $420,776, rounded, using a 7-percent discount rate ($387,959 from table 15 + $32,817 from table 7). See table 17.

Including Federal Government cost savings, the Coast Guard estimates the 10-year total discounted cost savings of the final rule under Assumption 2 to be about $3.5 million ($3,283,889 from table 16 and $230,491 from table 7), rounded, using a 7-percent discount rate. We estimate the annualized cost savings to be approximately $500,369, rounded, using a 7-percent discount rate ($467,552 from table 16 + $32,817 from table 7). See table 17.

Table 17. Total Discounted Annualized Cost Savings of the Final Rule (2023 Dollars, 10-year Period of Analysis, 7-Percent Discount Rate)

	§ 10.225(c) Cost Savings	
	Assumption 1	Assumption 2
§ 10.219(d) Cost Savings	$246,640	$326,232
§ 10.219(d) - Applicants	$141,320	$141,320
§ 10.219(d) - Federal Government	$32,817	$32,817
Total cost savings under each Assumption (annualized)	**$420,776**	**$500,369**

Note: Readers should add together the cost savings in each of the two columns separately under the individual Assumptions to obtain the total cost savings. Totals may not sum due to independent rounding.

Unquantifiable Benefits of the Final Rule

This final rule creates unquantifiable benefits for MMC applicants. This includes the flexibility to submit documents electronically; the changes are contained in §§ 1.03–15(h)(2)(i) and 10.219(i)(1). Because this is an option in the future, the Coast Guard does not have data at this point to estimate the cost savings that are associated with the electronic submission of documents, if applicants were to choose this option.

The use of *Pay.gov* provides a benefit to applicants because it is a free and

secure service that allows applicants to make payments to most Federal Government agencies. *Pay.gov* uses the latest industry-standard payment methods and encryption technology to safely collect, store, transmit, and protect applicants' personal information throughout the payment process. Applicants can access and make payments through *Pay.gov* 24 hours a day, 7 days a week, and every day of the year, including holidays.

In table 2, the Coast Guard lists the unquantifiable benefits where the regulatory text changes are more than minor grammatical changes.

Analysis of Alternatives

(1) Industry would continue to meet the current requirements in subchapter A, part 1 and subchapter B, parts 10–16 of title 46 of the CFR (current baseline without regulatory action).

This alternative represents the current state of the MCP with no updates to 46 CFR subchapter A, part 1 and subchapter B, parts 10–16. The Coast Guard rejected this alternative, because it does not require that applicants pay mandatory fees electronically through *Pay.gov*. This alternative maintains all the current, estimated, undiscounted costs between $246,640 and $326,232 annually, rounded (see the estimated costs under Assumptions 1 and 2, respectively, in the preferred alternative). The Coast Guard also continues to request applicants provide receipt of payment when using *Pay.gov* (for example, attach receipt to applications and provide receipt for MCP services) although this is not required. Applicants still have the option of paying mandatory fees in person at an REC through cash, check, credit card, and money order. Although in-person payments remain an option, these applicants would not realize potential cost savings by using *Pay.gov*. In-person and standard mail payments made by applicants maintain the options that currently exist, which some applicants may find more convenient (for in-person payments, perhaps as a customer service benefit) over payments by electronic means. This alternative would also not result in time and cost savings to original applicants, who would still be required to take an oath before an authorized individual. Additionally, this alternative would not clarify existing regulatory text.

(2) The Coast Guard would update regulatory requirements to align with a new MCP IT system and update mandatory fees with an incentive for electronic payment.

With this alternative, the Coast Guard would replace the current MMLD database and would propose changes to 46 CFR parts 10 through 14 and 16 to increase electronic submission of documents to support the credentialing process. With this alternative, the Coast Guard would provide an incentive to applicants to electronically pay mandatory fees through *Pay.gov*. It would be beneficial to applicants, who would save time and money; however, the Coast Guard is unable to estimate a cost savings for this item under this alternative because it would require a lengthy analysis of the Coast Guard's mandatory fee program.

The Coast Guard rejected this alternative because the update would require additional regulatory action to allow for future changes in the system, and any changes to mandatory fees would require further study and analysis by the Coast Guard, which would require the use of limited additional time and resources.

(3) The Coast Guard would update regulatory requirements to align with a new MCP IT system and require electronic payment but would not address mandatory fees.

With this alternative, the Coast Guard would not update the mandatory fees together with the requirement for the electronic payment of fees by individuals through a new MCP IT system. However, the Coast Guard kept the requirement under the preferred alternative (final rule) for the electronic payment of fees by applicants saving them approximately $141,320 annually, rounded (see the analysis for the preferred alternative for the derivation of this estimate), because it would not be connected to a new MCP IT system.

The Coast Guard rejected this alternative because the new system is at the beginning stages of development, and, as a result, the Coast Guard is unable to estimate the economic impact of this new system on applicants and companies. Therefore, the Coast Guard cannot accurately determine any adjustments to mandatory fees based on the new system's capabilities, potential costs to support the system, or cost savings generated from the system.

(4) Preferred Alternative—Update 46 CFR subchapter A, part 1 and subchapter B, parts 10–16 to update regulatory requirements to align with a new MCP IT system, require the electronic payment of fees and the option of electronic submission of supporting documents for an MMC application, remove the requirement for an oath to be administered by an authorized individual, and make editorial and non-substantive changes that clarify existing regulatory text.

We selected this preferred alternative because with this final rule, applicants will be required to pay mandatory fees electronically using *Pay.gov*, which will result in cost savings to them from not having to visit RECs in person. Additionally, applicants will benefit from this final rule because it will create an option for the electronic submission of certain documents in §§ 1.03–15(h)(2)(i) and 10.219(i)(1). However, it should be noted that this preferred alternative removes the flexibility for applicants who wish to continue to pay the mandatory fees in person. We analyzed the time and cost difference between the different payment methods and the requirement to use *Pay.gov* previously in this regulatory analysis.

This alternative also aligns with Department of Treasury regulations for promoting efficient, effective cash management through improved billing, collection, deposit, and payment of funds. The Coast Guard also removes the requirement for an oath to be taken by original applicants when they submit their MMC application. This saves time and money for original applicants who no longer need to travel to a bank or a bank branch or a notary public service to have the oath administered. Lastly, the Coast Guard makes numerous editorial changes to the affected CFR subchapters that clarify existing regulatory text. The Coast Guard analyzed and presented the cost savings and other unquantifiable benefits associated with this alternative earlier in this RA.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, we have considered whether this final rule has a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Based on the analysis in Section A, Regulatory Planning and Review, we found this final rule does not have a significant economic impact on a substantial number of small entities. The provisions of this final rule, which have an economic impact, affect individuals who apply for an MMC and do not directly regulate small entities. These include provisions that require electronic payment of merchant mariner credentialing fees in § 10.219(d), remove the requirement for an oath to be administered by an authorized official on Form CG–719B in § 10.225(c), and

allow for the electronic submission of certain documents in § 1.03–15(h)(2)(i) for appeals involving course approvals and merchant mariner personnel issues and in § 10.219(i) for requests involving no-fee MMCs. Since individual members of the public that are applying for MMCs are not considered to be small entities under the RFA, we have found that no small entities are impacted by these provisions of the final rule.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities because based on our analysis, the provisions of the final rule that have an economic impact (which also include editorial changes) affect applicants and do not directly regulate or affect small entities. The changes we made to all of the remaining provisions are editorial in nature (see table 4 in Section V, Regulatory Analysis, for a list of these changes).

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this final rule or any policy or action of the Coast Guard.

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).

D. Collection of Information

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the U.S. Coast Guard to consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

The Coast Guard has determined that the final rule will not result in a new collection nor modify an existing collection of information. Thus, this final rule does not change the burden, number of respondents, or number of responses in the collections currently approved by OMB under OMB Control Numbers 1625–0012 with a title of ''Certificate of Discharge to Merchant Mariners'' and 1625–0040 with a title of ''Applications for Merchant Mariners Credentials and Medical Certificates.''

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See* the Supreme Court's decision in *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (2000). Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

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

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have determined that it is not a ''significant energy action'' under Executive Order 13211, because although it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OMB's Office of Information and Regulatory Affairs has not designated it as a significant energy action.

L. Technical Standards and Incorporation by Reference

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in

their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This final rule is categorically excluded under paragraphs L54 and L56 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph L54 pertains to regulations that are editorial or procedural. Paragraph L56 pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

This final rule involves regulatory changes that are needed for implementation of a new information technology system that will replace the current MMLD database used by the Coast Guard to process mariner credentials. This new system features an electronic platform for activities such as mariners providing documents for applying for or maintaining mariner credentials, or submitting associated fees. In addition, the rule includes technical amendments, such as updates, to addresses and websites necessary for accessing or using MMLD.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 10

Penalties, Personally identifiable information, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 11

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 13

Cargo vessels, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 14

Oceanographic research vessels, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons discussed in the preamble, the Coast Guard is amending 46 CFR parts 1, 10, 11, 12, 13, 14, 15, and 16 as follows:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTION

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

Authority: 5 U.S.C. 552; 14 U.S.C. 503; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Secs. 101, 888, and 1512, Pub. L. 107–296, 116 Stat. 2135; DHS Delegation No. 00170.1, Revision No. 01.4; § 1.01–35 also issued under the authority of 44 U.S.C. 3507; and § 1.03–55 also issued under the authority of 46 U.S.C. 3306(j).

■ 2. Amend § 1.01–15 by revising paragraph (e) to read as follows:

§ 1.01–15 Organization; Districts; National Maritime Center.

* * * * *

(e) Applicants for merchant mariner credentials may apply to the Coast Guard National Maritime Center or any of the NMC detachments. Applicants may contact the National Maritime Center at 100 Forbes Drive, Martinsburg, West Virginia 25404, by telephone at 1–888–I–ASK–NMC (1–888–427–5662), by email at *IASKNMC@uscg.mil,* or online chat at website *https://www.dco.uscg.mil/national_maritime_center/.* A list of NMC detachment locations is available through the website.

* * * * *

■ 3. Amend § 1.03–15 as follows:
■ a. Revise paragraph (h)(2)(i); and
■ b. In paragraph (h)(2)(ii), remove the period after the words ''2703 Martin Luther King Jr. Avenue SE''.

The revision reads as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(2) * * *

(i) Appeals involving course approvals and merchant mariner personnel issues must be in writing and mailed or electronically submitted to the Office of Merchant Mariner Credentialing (CG–MMC), U.S. Coast Guard, Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509, by email to *MMCPolicy@uscg.mil,* or as prescribed by the Coast Guard.

* * * * *

PART 10—MERCHANT MARINER CREDENTIAL

■ 4. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 503; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2104, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 73; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8903, 8904, and 70105; Executive Order 10173; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 5. In part 10:,
■ a. Remove ''his or her'' wherever they appear, and add in their place ''their''; and
■ b. Remove ''he or she'' wherever they appear, and add in their place ''they''.

■ 6. Amend § 10.107 as follows:
■ a. Revise the definition of ''*Regional examination center or REC*''; and
■ b. Add a definition of ''*Written, writing, or in writing*''.

The revision and addition read as follows:

§ 10.107 Definitions in subchapter B.

* * * * *

Regional examination center or REC means a field office of the National Maritime Center that performs activities as required by this subchapter on behalf of the National Maritime Center.

* * * * *

Written, writing, or in writing means handwritten in ink, mechanically or electronically printed, or any form of expression that can be read, reproduced, or later communicated including electronically submitted and stored information.

* * * * *

§ 10.203 [Amended]

■ 7. Amend § 10.203 as follows:
■ a. In paragraph (b), remove the text, '', license, MMD, COR, or STCW endorsement''; and
■ b. In paragraph (c), remove the text, ''an MMD and an MMC serve'' and add, in its place, the text, ''an MMC serves''.

■ 8. Amend § 10.209 by revising the introductory text of paragraph (d) and paragraphs (d)(1) through (3) to read as follows:

§ 10.209 General application procedures.

* * * * *

(d) The application may be submitted in a manner prescribed by the Coast Guard that may include in person, by mail, or other electronic means. A complete MMC application, which is described in §§ 10.223, 10.225, 10.227, 10.229, and 10.231 may include—

(1) The application, consent for National Driver Register (NDR) check, oath, and the evaluation fee required by § 10.219 of this part;

(2) The applicant's continuous discharge book, certificate of identification, and MMC if expired;

(3) Proof, in a manner prescribed by the Coast Guard, which may include forms or other means, that the applicant passed the applicable vision, hearing, medical, or physical exam as required by subpart C of this part, or an unexpired medical certificate issued by the Coast Guard;

* * * * *

■ 9. Amend § 10.211 as follows:
■ a. Revise paragraph (c); and
■ b. In paragraph (f), remove the word ''furnishes'' and add, in its place, the word ''furnish''; and
■ c. In paragraph (i), remove the words ''has applied'' and add, in their place, the words ''have applied''.

The revision reads as follows:

§ 10.211 Criminal record review.

* * * * *

(c) *Criminal convictions.* The Transportation Security Administration (TSA) will provide to the Coast Guard the applicant's FBI number and criminal record generated in the TWIC review process. This information will be used by the Coast Guard to determine whether the applicant has a record of any criminal convictions.

* * * * *

■ 10. Amend § 10.217 by revising paragraph (a) to read as follows:

§ 10.217 Merchant mariner credential application and examination locations.

(a) *Applicant Locations.* Applicants for an MMC may apply to any of the Regional Examination Centers (RECs) or any other location designated by the Coast Guard. Applicants may contact the National Maritime Center at 100 Forbes Drive, Martinsburg, WV 25404, by telephone 1–888–427–5662 or 304–433–3400, or by email at *IASKNMC@uscg.mil.* A list of locations approved for application submittal is available through the Coast Guard website at *https://www.dco.uscg.mil/national_maritime_center/.*

* * * * *

■ 11. Amend § 10.219 by revising paragraphs (d) and (i)(1) to read as follows:

§ 10.219 Fees.

* * * * *

(d) Unless the Coast Guard provides additional payment options, fee payment must be for the exact amount and must be made by electronic payment in a manner specified by the Coast Guard. For information regarding current forms of electronic payment, go to the National Maritime Center's (NMC) website, *https://www.dco.uscg.mil/national_maritime_center/.*

* * * * *

(i) * * *

(1) An organization may submit a written request in a manner prescribed by the Coast Guard that may include mail, email, or electronic means to U.S. Coast Guard National Maritime Center, 100 Forbes Drive, Martinsburg, WV 25404, at email *IASKNMC@uscg.mil,* in order to be considered an eligible organization under the criteria set forth in paragraph (h) of this section. With the written request, the organization must provide evidence of its status as a youth-oriented, not-for-profit, charitable organization.

* * * * *

■ 12. Amend § 10.223 by revising paragraph (c)(5) to read as follows:

§ 10.223 Modification or removal of limitations or scope.

* * * * *

(c) * * *

(5) Any expired MMC held by the applicant. If still valid at the time of application, the applicant must surrender the old, original credential to the Coast Guard within 30 days of issuance of the new credential. If requested at the time of submission, the old MMC may be returned to the applicant after cancellation.

* * * * *

■ 13. Amend § 10.225 by revising paragraph (c) to read as follows:

§ 10.225 Requirements for original merchant mariner credentials.

* * * * *

(c) *Oath.* Every person who receives an original MMC must first solemnly swear or affirm, that they will faithfully and honestly, according to their best skill and judgment, without concealment or reservation, perform all the duties required by law and obey all lawful orders of superior officers. This affirmation remains binding for any subsequently issued MMC and endorsements added to the MMC, unless specifically renounced in writing.

§ 10.227 [Amended]

■ 14. Amend § 10.227 as follows:
■ a. Remove the word ''present'' and add, in its place, the word ''provide'' wherever it appears;
■ b. Remove the word ''Present'' and add, in its place, the word ''Provide'' wherever it appears;
■ c. In paragraph (d)(4):
■ i. Remove the word ''uncanceled'' and add, in its place, the words ''expired or uncanceled''; and
■ ii. Remove the word ''photocopy'' and add, in its place, the word ''copy'';
■ d. In paragraph (e)(1)(iv), remove the words ''license or'';
■ e. In paragraph (e)(6)(ii), remove the words ''License or'';
■ f. In paragraph (h), remove the words ''A license, MMD, COR, STCW endorsement, MMC, and any endorsements thereon, are'' and add, in their place, the words ''An MMC, and any endorsements thereon, is''; and
■ g. In paragraph (i)(1), remove the words ''presentation of'' and add, in their place, the words ''providing evidence of''.

■ 15. Amend § 10.231 by revising paragraph (c)(5) to read as follows:

§ 10.231 Requirements for raises of grade or new endorsements.

* * * * *

(c) * * *

(5) Any expired or uncanceled MMD, MMC, license, STCW endorsement, or COR held by the applicant. If one or more of these credentials are still valid at the time of application, a copy—front, back, and all attachments—will satisfy this requirement.

* * * * *

§ 10.232 [Amended]

■ 16. Amend § 10.232 as follows:
■ a. In paragraph (a)(1), remove the word ''presented'' and add, in its place, the word ''provided'';
■ b. In paragraph (a)(4), remove the word ''licensed'' and add, in its place, the word ''credentialed''; and
■ c. In paragraph (d)(6), remove the word ''License'' and add, in its place, the word ''credential''.

§ 10.233 [Amended]

■ 17. Amend § 10.233 as follows:
■ a. In paragraph (a), remove the text ''License, MMD, COR, or'';
■ b. In paragraph (b), after the words ''made in writing'' add the words ''and provided in a manner specified by the Coast Guard''; and
■ c. In paragraph (c), after the word ''Invalid'', add the words ''or expired''.

§ 10.235 [Amended]

■ 18. Amend § 10.235 by removing the text '', License, MMD, and COR'' wherever it appears.

■ 19. In § 10.239, amend Table 1 by revising the entry ''MODU licenses'' to read as follows:

§ 10.239 Quick reference table for MMC requirements.

* * * * *

Table 1 to § 10.239: Quick Reference Table for MMC Requirements

* * * * *

Endorsement category	Minimum age	Citizenship	Medical and physical exam	Experience	Recommendations and character check	Firefighting	Professional exam	Demonstration of professional ability	Recency of service	First aid and CPR
*		*		*	*	*		*	*	
MODU	§ 11.201(e); Note: exceptions.	U.S., § 10.221(a)(1); § 11.201(d)	§ 10.302(a)	OIM: § 11.470; B.S.: § 11.472; BCO: § 11.474; ChEng: § 11.542; Asst. Eng: § 11.544	N/A: Note exceptions in § 11.201(g) for original national or STCW endorsements	§ 11.201(h): note exceptions.	§ 11.201(j); § 11.903; § 11.920.	N/A	original § 11.201 (c)(2); renewal. § 10.227(e)	§ 11.201(i).
*		*		*	*	*		*	*	

§ 10.302 [Amended]

■ 20. In § 10.302(a), remove the words ''as appropriate'' and add, in their place, the words ''or as directed by the Coast Guard''.

§ 10.404 [Amended]

■ 21. Amend § 10.404 by removing the text '', License, or document'' wherever it appears.

§ 10.405 [Amended]

■ 22. In § 10.405, remove the words ''has attained'' wherever they appear and add, in their place, the words ''have attained''.

§ 10.407 [Amended]

■ 23. In § 10.407(g)(3), remove the text ''paragraph (d)'' and add, in its place, the text ''paragraph (e)''.

§ 10.409 [Amended]

■ 24. In § 10.409(e), remove the word ''present'' and add, in its place, the word ''provide''.

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

■ 25. The authority citation for part 11 is revised to read as follows:

Authority: 14 U.S.C. 503; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8903, 8904, 8906, and 70105; Executive Order 10173; DHS Delegation No. 00170.1, Revision No. 01.4. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

■ 26. In part 11, revise the following references wherever they appear:
■ a. ''his or her'' to read ''their''; and
■ b. ''he or she'' to read ''they''.

§ 11.102 [Amended]

■ 27. In § 11.102(a), remove the period after the text ''2703 Martin Luther King Jr. Avenue SE''.

§ 11.201 [Amended]

■ 28. Amend § 11.201 as follows:
■ a. In paragraph (c)(4), remove the word ''has'' and add, in its place, the word ''have'';
■ b. In paragraph (g)(1), remove the text ''License, merchant mariner document (MMD), or MMC'' and add, in its place, the text ''merchant mariner credential (MMC)'';
■ c. In paragraph (g)(2) remove the words ''license, certificate of registry,'' wherever it appears, and add, in their place, the text ''MMC''; and
■ d. In paragraphs (h)(1), (i), and (k) remove the word ''present'' wherever it appears and add, in its place, the word ''provide''.

§ 11.211 [Amended]

■ 29. Amend § 11.211(c)(1) as follows:
■ a. Remove the words ''or license'' wherever they appear; and
■ b. Remove the words ''licenses or''.

§ 11.217 [Amended]

■ 30. Amend § 11.217(a) by removing the word ''presents'' and adding, in its place, the word ''provides''.

§ 11.301 [Amended]

■ 31. Amend § 11.301(g) by removing the words ''of the license''.

§ 11.337 [Amended]

■ 32. Amend § 11.337(a) by removing the word ''present'' and adding, in its place, the word ''provide''.

§ 11.401 [Amended]

■ 33. Amend § 11.401 as follows:
■ a. Remove the words ''License or'' wherever they appear; and
■ b. in paragraph (d), remove the word ''present'' and add, in its place, the word ''provide''.

§ 11.402 [Amended]

■ 34. Amend § 11.402 as follows:
■ a. In paragraph (c)(2), remove the words ''License or''; and
■ b. In paragraph (c)(3):
■ i. Remove the words ''a License or'' and add, in their place, the text ''an MMC''; and
■ ii. Remove the words ''Mate's License or'' and add, in their place, the word ''Mate's''.

§ 11.404 [Amended]

■ 35. Amend § 11.404 as follows:
■ a. In paragraph (a)(2), remove the words ''a License or'' and add, in their place, the word ''an''; and
■ b. In paragraph (b), remove the words ''or License''.

§ 11.405 [Amended]

■ 36. Amend § 11.405(a) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.406 [Amended]

■ 37. Amend § 11.406 as follows:
■ a. Remove the words ''a License or'' wherever they appear and add, in their place, the word ''an''; and

■ b. In paragraph (c), remove the words ''or License''.

§ 11.407 [Amended]

■ 38. Amend § 11.407 as follows:
■ a. In paragraph (c), remove the words ''a license or'' and add, in their place, the word ''an''; and
■ b. In paragraph (d), remove the words ''or License''.

§ 11.412 [Amended]

■ 39. Amend § 11.412 by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.414 [Amended]

■ 40. Amend § 11.414(a)(1)(iii) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.418 [Amended]

■ 41. Amend § 11.418 by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.420 [Amended]

■ 42. Amend § 11.420(a) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.422 [Amended]

■ 43. Amend § 11.422 as follows:
■ a. In paragraph (b)(4), remove the words ''License or''; and
■ b. In paragraph (c), remove the words ''or License''.

§ 11.424 [Amended]

■ 44. Amend § 11.424 as follows:
■ a. In paragraph (a)(1), remove the words ''a License or'' and add, in their place, the word ''an''; and
■ b. In paragraph (b), remove the words ''License or''.

§ 11.425 [Amended]

■ 45. Amend § 11.425 as follows:
■ a. Remove the words ''a License or'' wherever they appear and add, in their place, the word ''an''; and
■ b. In paragraph (d), remove the word ''presentation'' and add, in its place, the words ''providing evidence''.

§ 11.426 [Amended]

■ 46. Amend § 11.426(a)(1) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.427 [Amended]

■ 47. Amend § 11.427 as follows:
■ a. Remove the words ''a License or'' wherever they appear and add, in their place, the word ''an''; and
■ b. In paragraph (d), remove the word ''presentation'' and add, in its place, the word ''providing evidence''.

§ 11.428 [Amended]

■ 48. Amend § 11.428(b) by removing the words ''License or''.

§ 11.429 [Amended]

■ 49. Amend § 11.429(c) by removing the words ''License or''.

§ 11.433 [Amended]

■ 50. Amend § 11.433(a) by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.435 [Amended]

■ 51. Amend § 11.435 as follows:
■ a. In paragraph (a)(1), remove the words ''a License or'' and add, in their place, the word ''an''; and
■ b. In paragraph (a)(2), remove the words ''License or''.

§ 11.437 [Amended]

■ 52. In § 11.437(a)(3):
■ a. Remove the words ''holding a License or'' and add, in their place, the words ''holding an''; and
■ b. Remove the words ''this License'' and add, in their place, the words ''this MMC endorsement''.

§ 11.442 [Amended]

■ 53. Amend § 11.442(a) by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.444 [Amended]

■ 54. Amend § 11.444(a)(2) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.446 [Amended]

■ 55. Amend § 11.446 by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.450 [Amended]

■ 56. Amend § 11.450 as follows:
■ a. In paragraph (c), remove the words ''Licenses or''; and
■ b. In paragraph (d), remove the word ''License'' and add, in its place, the word ''endorsement''.

§ 11.452 [Amended]

■ 57. Amend § 11.452 as follows:
■ a. In paragraph (a):
■ i. Remove the words ''or License ''; and
■ ii. Remove the words ''a License or'' and add, in their place, the word ''an''; and
■ b. In paragraph (b), remove the words ''License or''.

§ 11.454 [Amended]

■ 58. Amend § 11.454 as follows:
■ a. In paragraph (c), remove the word ''presentation'' and add, in its place, the words ''providing evidence''; and
■ b. In paragraph (d), remove the words ''a License or'' and add, in their place, the word ''an''.

§ 11.457 [Amended]

■ 59. Amend § 11.457 as follows:
■ a. In paragraph (a), remove the word ''present'' and add, in its place, the word ''provide''; and
■ b. In paragraph (b), remove the words ''License or''.

§ 11.462 [Amended]

■ 60. Amend § 11.462 by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.464 [Amended]

■ 61. Amend § 11.464 by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.465 [Amended]

■ 62. Amend § 11.465 by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.466 [Amended]

■ 63. Amend § 11.466(b) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.470 [Amended]

■ 64. Amend § 11.470 as follows:
■ a. Remove the word ''Present'' wherever it appears and add, in its place, the word ''Provide'';
■ b. In paragraph (d)(2)(i), remove the words ''a License or'' and add, in their place, the word ''an'';
■ c. In paragraphs (e), (g), and (i), remove the words ''License or''; and
■ d. In paragraph (j)(2)(i), remove the words ''a License or'' and add, in their place, the word ''an''.

§ 11.472 [Amended]

■ 65. Amend § 11.472 as follows:
■ a. Remove the word ''Present'' wherever it appears and add, in its place, the word ''Provide''; and
■ b. In paragraph (b), remove the words ''license or''.

§ 11.474 [Amended]

■ 66. Amend § 11.474 as follows:
■ a. Remove the word ''Present'' wherever it appears and add, in its place, the word ''Provide'';
■ b. In paragraph (a)(1)(i), remove the words ''a License or'' and add, in their place, the word ''an''; and
■ c. In paragraph (b), remove the words ''License or''.

§ 11.480 [Amended]

■ 67. In § 11.480(d), remove the word ''present'' and add, in its place, the word ''provide''; and remove the text ''fax,''.

§ 11.482 [Amended]

■ 68. Amend § 11.482 as follows:
■ a. Remove the words ''License or'' wherever they appear; and
■ b. In paragraph (c), remove the words ''a License or'' and add, in their place, the word ''an''.

§ 11.491 [Amended]

■ 69. Amend § 11.491(a) by removing the words ''License or''.

§ 11.501 [Amended]

■ 70. Amend § 11.501 as follows:
■ a. In paragraph (c), remove the words ''Licenses or''; and
■ b. In paragraphs (d) and (e), remove the words ''License or'' wherever they appear.

§ 11.502 [Amended]

■ 71. Amend § 11.502(b) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.503 [Amended]

■ 72. Amend § 11.503 as follows:
■ a. Remove the words ''a License or'' wherever they appear, and add, in their place, the word ''an''; and
■ b. In paragraph (c)(2), remove the words ''licensed or''.

§ 11.510 [Amended]

■ 73. Amend § 11.510(a)(2) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.512 [Amended]

■ 74. Amend § 11.512(a)(1) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.514 [Amended]

■ 75. Amend § 11.514(a) by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 11.542 [Amended]

■ 76. Amend § 11.542 as follows:
■ a. Remove the word ''Present'' wherever it appears, and add, in its place, the word ''Provide''; and
■ b. In paragraph (b), remove the words ''presentation of'' and add, in their place, the word ''providing''.

§ 11.544 [Amended]

■ 77. Amend § 11.544 as follows:
■ a. Remove the word ''Present'' wherever it appears, and add, in its place, the word ''Provide''; and
■ b. In paragraph (b), remove the words ''presentation of the'' and add, in their place, the word ''providing''.

§ 11.603 [Amended]

■ 78. Amend § 11.603 by removing the words ''License must present'' and adding, in their place, the text ''an MMC must provide evidence of''.

§ 11.604 [Amended]

■ 79. Amend § 11.604 by removing the word ''present'' and adding, in its place, the word ''provide''.

§ 11.701 [Amended]

■ 80. Amend § 11.701(d) by removing the words ''A License or'' and adding, in their place, the word ''An''.

§ 11.703 [Amended]

■ 81. Amend § 11.703(d) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.705 [Amended]

■ 82. Amend § 11.705(c) by removing the words ''License or'' wherever they appear.

§ 11.707 [Amended]

■ 83. Amend § 11.707(b) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 11.713 [Amended]

■ 84. Amend § 11.713 by removing the words ''License or'' wherever they appear.

§ 11.805 [Amended]

■ 85. Amend § 11.805 as follows:
■ a. In paragraph (a), remove the word ''present'', and add, in its place, the word ''provide''; and
■ b. In paragraph (b), remove the word ''is'' and add, in their place, the word ''are''.

§ 11.807 [Amended]

■ 86. Amend § 11.807(d) by removing the word ''presents'' and adding, in its place, the word ''provides''.

§ 11.821 [Amended]

■ 87. Amend § 11.821(b)(2) by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 11.903 [Amended]

■ 88. Amend § 11.903(c)(1) by removing the words ''a License'' and adding, in their place, the words ''an endorsement''.

§ 11.920 [Amended]

■ 89. In § 11.920, amend the heading to Table 2 by removing the word ''Licenses'' and add, in its place, the word ''Endorsements''.

PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

■ 90. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; DHS Delegation No. 00170.1, Revision No. 01.4.

§ 12.201 [Amended]

■ 91. Amend § 12.201(a)(2) by removing the words ''his or her'' and adding, in their place, the word ''their''.

§ 12.401 [Amended]

■ 92. Amend § 12.401(c)(3) by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 12.405 [Amended]

■ 93. Amend § 12.405(a) by removing the words ''he or she'' and adding, in their place, the word ''they''.

§ 12.407 [Amended]

■ 94. Amend § 12.407(b)(1)(iii), by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 12.409 [Amended]

■ 95. Amend § 12.409(b)(1)(iii), by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 12.501 [Amended]

■ 96. Amend § 12.501(c)(3), by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 12.625 [Amended]

■ 97. Amend § 12.625(a)(1) by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 12.627 [Amended]

■ 98. Amend § 12.627(a)(1) by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 12.707 [Amended]

■ 99. Amend § 12.707 by removing the word ''present'' and adding, in its place, the word ''provides''.

§ 12.709 [Amended]

■ 100. Amend § 12.709(a) by removing the word ''present'' and adding, in its place, the word ''provides''.

§ 12.711 [Amended]

■ 101. Amend § 12.711(a) by removing the word ''presents'' and adding, in its place, the word ''provides''.

§ 12.809 [Amended]

■ 102. Amend § 12.809(b) by removing the word ''present'' and adding, in its place, the word ''provide''.

PART 13—CERTIFICATION OF TANKERMEN

■ 103. The authority citation for part 13 continues to read as follows:

Authority: 46 U.S.C. 3703, 7317, 8105, 8703, 9102; DHS Delegation No. 00170.1, Revision No. 01.4.

§ 13.107 [Amended]

■ 104. Amend § 13.107 as follows:
■ a. In paragraph (a), remove the words ''engineer License or engineer'' and add, in their place, the words ''engineer officer''; and
■ b. In paragraph (d), remove the words ''licensed or''.

§ 13.111 [Amended]

■ 105. Amend § 13.111 as follows:
■ a. In paragraph (d)(3), remove the word ''Present'' and add, in its place, the word ''Provide''; and
■ b. In paragraph (d)(4):
■ i. Remove the words ''Present evidence in the form of a letter'' and add, in their place, the words ''Provide evidence in a method prescribed by the Coast Guard''; and
■ ii. Remove the words ''on company letterhead''.

§ 13.120 [Amended]

■ 106. Amend § 13.120 by removing the word ''present'' wherever it appears and adding, in its place, the word ''provide''.

§ 13.201 [Amended]

■ 107. Amend § 13.201(c) introductory text, by removing the word ''Present'' and adding, in its place, the word ''Provide''.;

§ 13.203 [Amended]

■ 108. Amend § 13.203 by removing the word ''present'' wherever it appears, and adding, in its place, the word ''provide''.

§ 13.205 [Amended]

■ 109. Amend § 13.205 as follows:
■ a. Remove the words ''Proof of service must be provided in a letter on company letterhead'' and add, in their place, the words ''Provide evidence in a method prescribed by the Coast Guard of proof of service''; and
■ b. Remove the words ''The letter'' and add, in their place, the words ''The evidence''.

§ 13.301 [Amended]

■ 110. Amend § 13.301(c) by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 13.303 [Amended]

■ 111. Amend § 13.303(a) by removing the word ''present'' and adding, in its place, the word ''provide''.

§ 13.305 [Amended]

■ 112. Amend § 13.305 as follows:
■ a. Remove the words ''Proof of service must be provided in a letter on company letterhead'' and add, in their place, the words ''Provide evidence in a method prescribed by the Coast Guard of proof of service''; and
■ b. Remove the words ''The letter'' and add, in their place, the words ''The evidence''.

§ 13.401 [Amended]

■ 113. Amend § 13.401 by removing the word ''Present'' wherever it appears, and adding, in its place, the word ''Provide''.

§ 13.405 [Amended]

■ 114. Amend § 13.405(a) as follows:
■ a. Remove the words ''A letter on company letterhead'' and add, in their place, the words ''Evidence in a method prescribed by the Coast Guard''; and
■ b. Remove the words ''The letter'' and add, in their place, the words ''The evidence''.

§ 13.501 [Amended]

■ 115. Amend § 13.501(c) by removing the word ''Present'' and adding, in its place, the word ''Provide''.

§ 13.503 [Amended]

■ 116. Amend § 13.503(a) by removing the word ''present'' and adding, in its place, the word ''provide''.

§ 13.505 [Amended]

■ 117. Amend § 13.505(a) as follows:
■ a. Remove the words ''Service must be proved by a letter on company letterhead'' and add, in their place, the words ''Provide evidence in a method prescribed by the Coast Guard of proof of service''; and
■ b. Remove the words ''The letter'' and add, in their place, the words ''The evidence''.

PART 14—SHIPMENT AND DISCHARGE OF MERCHANT MARINERS

■ 118. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 552; 46 U.S.C. Chapters 103 and 104; 46 U.S.C. 70105.

■ 119. In part 14, revise all references to ''his or her'' to read ''their''.

§ 14.103 [Amended]

■ 120. In § 14.103(c), remove the text ''*http://www.uscg.mil/nmc*'' and add, in its place, the text ''*https://www.dco.uscg.mil/national_maritime_center/*''.

§ 14.205 [Amended]

■ 121. Amend § 14.205 as follows:
■ a. Remove the word ''present'' and add, in its place, the word ''provide''; and
■ b. Remove the words ''every document, certificate, credential, or license'' and add, in their place, the words ''a merchant mariner credential with endorsements''.

§ 14.207 [Amended]

■ 122. In § 14.207(a)(1), remove the text ''license, MMD or''.

■ 123. Revise § 14.307 to read as follows:

§ 14.307 Entries on certificate of discharge.

(a) Each master or individual in charge of a vessel must, for each merchant mariner being discharged from the vessel, prepare a certificate of discharge in accordance with the procedure prescribed by the Coast Guard. The prescribed format may include the current form CG–718A or other means provided by the Coast Guard. If not using the Coast Guard prescribed format, the mariner must be provided with all the same information included on the certificate of discharge.

(b) Each mariner being discharged must validate the information on the certificate of discharge by signing it.

(c) When the mariner leaves the vessel, the master or individual in charge must give the certificate of discharge to the mariner.

§ 14.403 [Amended]

■ 124. Amend § 14.403(a)(2) by removing the word ''presented'' and adding, in its place, the word ''provided''.

§ 14.405 [Amended]

■ 125. Amend § 14.405 as follows:
■ a. In paragraph (c), before the words ''will forward the request'', add the text ''OCMI''; and
■ b. In paragraph (d), remove the words ''the Coast Guard. The Coast Guard will'' and add, in their place, the text ''the Coast Guard OCMI in whose zone the vessel is located. The Coast Guard OCMI will''.

§ 14.407 [Amended]

■ 126. In § 14.407(a), remove the words ''to the address provided'' and add, in their place, the words ''in a manner specified''.

PART 15—MANNING REQUIREMENTS

■ 127. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8103, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906 and 9102; sec. 617, Pub. L. 111–281, 124 Stat. 2905; and DHS Delegation No. 00170.1, Revision No. 01.4.

§ 15.105 [Amended]

■ 128. Amend § 15.105 as follows:
■ a. In paragraph (b), remove the words ''Licenses and''; and
■ b. In paragraph (h), remove the words ''License or''.

§ 15.410 [Amended]

■ 129. Amend § 15.410 by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 15.515 [Amended]

■ 130. In § 15.515, remove the words ''License or''.

§ 15.520 [Amended]

■ 131. Amend § 15.520 as follows:
■ a. Remove the words ''a License or'' wherever they appear, and add, in their place, the word ''an'';
■ b. In paragraph (c), remove the words ''A License or'' wherever it appears, and add, in their place, the word ''An'';
■ c. In paragraph (d), remove the text ''a License as Master endorsed as OIM, or'';
■ d. In paragraph (e), remove the text ''a License as Master endorsed as OIM or''; and
■ e. In paragraph (g), remove the words ''License, or an''.

§ 15.605 [Amended]

■ 132. Amend § 15.605 by removing the words ''a License or'' wherever they appear and adding, in their place, the word ''an''.

§ 15.610 [Amended]

■ 133. Amend § 15.610(b) as follows:
■ a. Remove the words ''a License or'' and add, in their place, the word ''an''; and
■ b. Before the text ''MMC for towing vessels'', remove the words ''License or''.

§ 15.701 [Amended]

■ 134. Amend § 15.701(b) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 15.730 [Amended]

■ 135. In § 15.730(d), remove the word ''presented'' and add, in its place, the word ''provided''.

§ 15.805 [Amended]

■ 136. Amend § 15.805 as follows:
■ a. Remove the words ''a License or'' wherever they appear, and add, in their place, the word ''an'';
■ b. In paragraph (a), remove the words ''License as or a''; and
■ c. In paragraph (b), remove the word ''is'' and add, in their place, the word ''are''.

§ 15.810 [Amended]

■ 137. Amend § 15.810 as follows:
■ a. Remove the words ''a License or'' wherever they appear and add, in their place, the word ''an'';
■ b. In paragraphs (c) and (d)(2), remove the words ''License or''; and
■ c. In paragraph (d)(2)(ii), remove the words ''A License or'' and add, in their place, the word ''An''.138. Amend § 15.812 as follows:
■ a. Revise paragraphs (b) and (c), table 1 to § 15.812(e)(1), and table 2 to § 15.812(e)(2);
■ b. In paragraph (f), remove the words ''valid License or'' wherever they appear and add, in their place, the word ''or''; and
■ c. In paragraph (f)(1)(i), remove the words ''a License or'' and add, in their place, the word ''an''.

The revisions read as follows:

§ 15.812 Pilots.

* * * * *

(b) The following individuals may serve as a Pilot on a vessel subject to paragraph (a) of this section, when underway on the navigable waters of the United States that are designated areas:

(1) An individual holding a valid MMC officer endorsement as First-Class Pilot, operating within the restrictions of their credential, may serve as Pilot on any vessel to which this section applies.

(2) An individual holding a valid MMC officer endorsement as Master or Mate, employed aboard a vessel within the restrictions of their credential, may serve as Pilot on a vessel of not more than 1,600 GRT propelled by machinery, described in paragraphs (a)(1) and (3) of this section, provided they—

(i) Are at least 21 years old;

(ii) Are able to show current knowledge of the waters to be navigated, as required in § 11.713 of this subchapter; and

(iii) Provide evidence of completing a minimum of four roundtrips over the route to be traversed while in the wheelhouse as watchstander or observer. At least one of the roundtrips must be made during the hours of darkness if the route is to be traversed during darkness.

(3) An individual holding a valid MMC officer endorsement as Master, Mate, or operator employed aboard a vessel within the restrictions of their credential, may serve as Pilot on a tank barge or tank barges totaling not more than 10,000 GRT/GT, described in paragraphs (a)(1) and (3) of this section, provided they -

(i) Are at least 21 years old;

(ii) Are able to show current knowledge of the waters to be navigated, as required in § 11.713 of this subchapter;

(iii) Have a current physical examination in accordance with the provisions of § 11.709 of this subchapter;

(iv) Have at least 6 months of service in the deck department on towing vessels engaged in towing operations; and

(v) Provide evidence of completing a minimum of 12 roundtrips over the route to be traversed, as an observer or under instruction in the wheelhouse. At least three of the roundtrips must be made during the hours of darkness if the route is to be traversed during darkness.

(c) An individual holding a valid MMC officer endorsement as Master, Mate, or operator, employed aboard a vessel within the restrictions of their credential, may serve as a Pilot for a vessel subject to paragraphs (a)(1) and (2) of this section, when underway on the navigable waters of the United States that are not designated areas of pilotage waters, provided they—

(1) Are at least 21 years old;

(2) Are able to show current knowledge of the waters to be navigated, as required in § 11.713 of this subchapter; and

(3) Have a current physical examination in accordance with the provisions of § 11.709 of this subchapter.

* * * * *

TABLE 1 TO § 15.812(e)(1)—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S.-INSPECTED, SELF-PROPELLED VESSELS, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First-Class Pilot's MMC officer endorsements are issued)	Non-designated areas of pilotage waters (between the 3-mile line and the start of traditional pilotage routes)
Inspected self-propelled vessels greater than 1,600 GRT, authorized by their COI to proceed beyond the Boundary Line, or operating on the Great Lakes.	First-Class Pilot	Master or Mate may serve as Pilot if they— 1. Are at least 21 years old; 2. Have an annual physical exam; and 3. Maintain current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GRT, authorized by their COI to proceed beyond the Boundary Line, or operating on the Great Lakes.	First-Class Pilot, *or* Master or Mate may serve as Pilot if they— 1. Are at least 21 years old; 2. Maintains current knowledge of the waters to be navigated; and [1] 3. Have four roundtrips over the route.[2]	Master or Mate may serve as Pilot if they— 1. Are at least 21 years old; and 2. Maintain current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels greater than 1,600 GRT, not authorized by their COI to proceed beyond the Boundary Line (inland route vessels); other than vessels operating on the Great Lakes.	First-Class Pilot	Master or Mate may serve as Pilot if they— 1. Are at least 21 years old; 2. Have an annual physical exam; and 3. Maintain current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GRT, not authorized by their COI to proceed beyond the Boundary Line (inland route vessels); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] One roundtrip within the past 60 months.
[2] If the route is to be traversed during darkness, one of the four roundtrips must be made during darkness.

* * * * *

TABLE 2 TO § 15.812(e)(2)—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S.-INSPECTED TANK BARGES, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First-Class Pilot's MMC officer endorsements are issued)	Non-designated areas of pilotage waters (between the 3-mile line and the start of traditional pilotage routes)
Tank Barges greater than 10,000 GRT/GT, authorized by their COI to proceed beyond the Boundary Line, or operating on the Great Lakes.	First-Class Pilot	Master, Mate, or Master, Mate (Pilot) of towing vessels may serve as Pilot if they: 1. Are at least 21 years old; 2. Have an annual physical exam; [2] 3. Maintain current knowledge of the waters to be navigated; [1] and 4. Have at least 6 months' service in the deck department on towing vessels engaged in towing operations.
Tank Barges 10,000 GRT/GT or less, authorized by their COI to proceed beyond the Boundary Line, or operating on the Great Lakes.	First-Class Pilot, or Master, Mate, or Master, Mate (Pilot) of towing vessels may serve as Pilot if they: 1. Are at least 21 years old; 2. Have an annual physical exam; [2] 3. Maintain current knowledge of the waters to be navigated; [1] 4. Have at least 6 months' service in the deck department on towing vessels engaged in towing operations; and 5. Have 12 roundtrips over the route.[3]	
Tank Barges authorized by their COI for inland routes only (lakes, bays, and sounds/rivers); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] One roundtrip within the past 60 months.
[2] Annual physical exam does not apply to an individual who will serve as a Pilot of a tank barge of less than 1,600 GRT.
[3] If the route is to be traversed during darkness, three of the 12 roundtrips must be made during darkness.

* * * * *

§ 15.815 [Amended]

■ 139. Amend § 15.815(c) by removing the words ''a License or'' and adding, in their place, the word ''an''.

§ 15.820 [Amended]

■ 140. Amend § 15.820 as follows:
■ a. In paragraph (a), remove the words ''or license'';
■ b. In paragraph (a)(3), remove the words ''a License or''; and
■ c. In paragraph (c), remove the words ''License or''.

§ 15.825 [Amended]

■ 141. Amend § 15.825(a) by removing the words ''License or''.

§ 15.901 [Amended]

■ 142. Amend § 15.901 as follows:
■ a. Remove the words ''a License or'' wherever they appear and add, in their place, the word ''an''; and
■ b. Remove the words ''individual's License or'' wherever they appear and add, in their place, the word ''individual's''.

§ 15.905 [Amended]

■ 143. Amend § 15.905 as follows:
■ a. Remove the words ''a License or'' wherever they appear and add, in their place, the word ''an''; and
■ b. Remove the words ''individual's License or'' wherever they appear, and add, in their place, the word ''individual's''.

§ 15.915 [Amended]

■ 144. Amend § 15.915 as follows:
■ a. Remove the words ''Licenses and'' wherever they appear; and
■ b. Remove the words ''License or'' wherever they appear.

§ 15.1001 [Amended]

■ 145. In § 15.1001, remove the words ''or License with'' and add, in their place, the words ''with an''.

PART 16—CHEMICAL TESTING

■ 146. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 147. Amend § 16.105 by revising the definition of *Credential* to read as follows:

§ 16.105 Definitions of terms used in this part.

* * * * *

Credential is the same as defined in 46 CFR 10.107.

* * * * *

■ 148. Amend § 16.220 as follows:
■ a. In paragraph (a)(1), remove the text ''a License, Certificate of Registry (COR), MMD, or'' and add, in its place, the word ''an'';
■ b. In paragraph (a)(3), remove the text ''a License or COR'' and add, in its place, the text ''an MMC''; and
■ c. In paragraph (a)(5), revise the second sentence.

§ 16.220 Periodic testing requirements.

(a) * * *

(5) * * * Results of the test must be provided to the Coast Guard in a manner prescribed by the Coast Guard.* * *

* * * * *

§ 16.230 [Amended]

■ 149. Amend § 16.230(b)(1) by removing the word ''License'' and adding, in its place, the word ''credential''.

§ 16.500 [Amended]

■ 150. Amend § 16.500 by removing the period after the text ''2703 Martin Luther King Jr. Avenue SE''.

Dated: November 6, 2024.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2024–27026 Filed 12–16–24; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL REGISTER

Vol. 89 Tuesday,

No. 242 December 17, 2024

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Part 271 and 273

Supplemental Nutrition Assistance Program: Program Purpose and Work Requirement Provisions of the Fiscal Responsibility Act of 2023; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 271 and 273

[FNS 2023–0058]

RIN 0584–AF01

Supplemental Nutrition Assistance Program: Program Purpose and Work Requirement Provisions of the Fiscal Responsibility Act of 2023

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

ACTION: Final rule.

SUMMARY: This final rule implements three provisions of the Fiscal Responsibility Act (FRA) of 2023, affecting the program purpose and individuals subject to the able-bodied adults without dependents (ABAWD) time limit for the Supplemental Nutrition Assistance Program (SNAP). These changes do the following: add language about assisting low-income adults in obtaining employment and increasing their earnings to the program purpose; update and define exceptions from the ABAWD time limit; and adjust the number of discretionary exemptions available to State agencies each year. This rule also clarifies procedures for when State agencies must screen for exceptions to the time limit and verification requirements for exceptions.

DATES: This final rule is effective January 16, 2025.

ADDRESSES: SNAP Program Development Division, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Catrina Kamau, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 1320 Braddock Place, Alexandria, Virginia 22314. Email: *SNAPCPBRules@usda.gov.* Phone: (703) 305–2022.

SUPPLEMENTARY INFORMATION:

Acronyms or Abbreviations

Able-bodied adults without dependents, ABAWDs or time-limited participants
Code of Federal Regulations, CFR
Fiscal Responsibility Act of 2023, FRA
Fiscal Year, FY
Food and Nutrition Act of 2008, the Act
Food and Nutrition Service, FNS
State SNAP Agencies, State agencies or States
Supplemental Nutrition Assistance Program, SNAP
U.S. Code, U.S.C.
U.S. Department of Agriculture, the Department or USDA

I. Background

The Food and Nutrition Act of 2008 (the Act), establishes national eligibility standards for the Supplemental Nutrition Assistance Program (SNAP), including work requirements for certain individuals. The first of these work requirements, referred to as the general work requirements, requires certain individuals to register for work; accept an offer of suitable employment; not voluntarily quit or reduce hours of employment below 30 hours per week, without good cause; and participate in workfare or the SNAP Employment and Training (SNAP E&T) program if required by the State agency. Most SNAP participants are exempt from the general work requirements because they are older adults, have disabilities, are children, or meet another exemption from the general work requirements listed in the Act.

Individuals who are not exempt from the general work requirements may also be subject to an additional time-limit work requirement. The Act limits these individuals, referred to as able-bodied adults without dependents (ABAWDs) or time-limited participants, to receiving SNAP benefits for three months in a 36-month period unless they are meeting this additional time-limit work requirement, live in an area where the time limit is waived due to a lack of sufficient jobs or a high rate of unemployment, or are otherwise exempt. This is sometimes referred to as the ABAWD time limit. Individuals can continue receiving SNAP beyond the three-month time limit by working, participating in a qualifying work program (including SNAP E&T), or any combination of the two, for at least 20 hours a week (averaged monthly to 80 hours a month). Individuals can also meet the time limit by participating in and complying with workfare for the number of hours assigned (equal to the result obtained by dividing a household's SNAP allotment by the higher of the applicable Federal or State minimum wage). For the purposes of the time limit, working includes unpaid or volunteer work that is verified by the State agency. These requirements are sometimes referred to as the ABAWD work requirement. For the purposes of the final rule, the Department will use the term ''time limit'' to refer to both the ABAWD work requirement and time limit, as this phrasing more accurately describes the requirements applied to time-limited participants.

The Act provides exceptions from the time limit based on certain individual circumstances, such as age, pregnancy, or meeting an exemption from the general work requirements. Individuals who meet an exception are not subject to the time limit. The Act also allows for waivers of the time limit in areas with an unemployment rate over 10 percent or an insufficient number of jobs to provide employment for individuals. Individuals residing in waived areas are not required to meet the time limit. Lastly, the Act also establishes an annual allotment of discretionary exemptions that State agencies may use to extend eligibility for a time-limited participant who is not meeting the requirement. Each discretionary exemption can extend eligibility for one participant for one month, and there is no limit on the number of discretionary exemptions a single participant can receive.

Sections 311 through 313 of the Fiscal Responsibility Act (FRA) of 2023 (Pub. L. 118–5) amended the Act, revising exceptions from the time limit and the allotment of discretionary exemptions, as well as the program purpose. Based on these changes, the Department first issued guidance in June 2023 [1] to assist State agencies in implementing the FRA changes and then issued subsequent question-and-answer guidance in July and August 2023.[2] [3] In April 2024, the Department proposed to amend SNAP rules to reflect the requirements of the FRA and included discretionary provisions to ensure consistent application of these changes. These changes were proposed in the notice of proposed rulemaking, titled *Supplemental Nutrition Assistance Program: Program Purpose and Work Requirement Provisions of the Fiscal Responsibility Act of 2023* (84 FR 34340), published April 30, 2024.[4]

[1] U.S. Department of Agriculture. Food and Nutrition Service. *Implementing SNAP Provisions in the Fiscal Responsibility Act of 2023.* Washington, DC, 2023. Accessed August 2, 2024. *https://www.fns.usda.gov/snap/implementing-fra-provisions-2023.*

[2] U.S. Department of Agriculture. Food and Nutrition Service. *Supplemental Nutrition Assistance Program (SNAP)—SNAP Provisions of the Fiscal Responsibility Act of 2023—Questions and Answers #1.* Washington, DC, 2023. Accessed August 2, 2024. *https://www.fns.usda.gov/snap/provisions-fiscal-responsibility-act-2023-questions-and-answers-1.*

[3] U.S. Department of Agriculture. Food and Nutrition Service. *Supplemental Nutrition Assistance Program (SNAP)—SNAP Provisions of the Fiscal Responsibility Act of 2023—Questions and Answers #1.* Washington, DC, 2023. Accessed August 2, 2024. *https://www.fns.usda.gov/snap/provisions-fiscal-responsibility-act-2023-questions-and-answers-2.*

[4] The notice of proposed rulemaking may be found at *https://www.regulations.gov/document/FNS-2023-0058-0001.*

II. Summary of Comments and Discussion of Rule Provisions

The Department received 41 public comment submissions on the proposed rule.[5] Most comments were supportive of the Department's proposed implementation of the FRA requirements, such as the flexibility for State agencies and alignment across public assistance programs. In particular, commenters welcomed the new exceptions for and definitions of individuals experiencing homelessness, veterans, and individuals aging out of foster care, because they help ensure some of the most vulnerable populations can access SNAP benefits. Commenters also commended the Department's efforts to ensure that individuals are appropriately screened for work requirements in a thorough and timely manner. In addition to their support, commenters also provided suggestions to further clarify the definitions for the new exceptions and strengthen screening requirements.

Twelve respondents wrote to oppose the FRA itself and work requirements for SNAP in general. These commenters believe the changes required by the FRA restrict access to SNAP for certain vulnerable individuals and increase hardship without improving employment outcomes. Despite this opposition to some of the underlying statutory requirements, these commenters generally supported the Department's proposed implementation of the FRA changes.

Three commenters expressed overall opposition to the rule, believing the changes conflict with enforcement of the time limit and the definitions for the new exceptions do not align with Congressional intent. These respondents contended that the new definitions are overly expansive and disagreed with current policy allowing self-attestation to verify household information, claiming it leads to fraud and waste.

The Department reviewed and considered all comments received. A discussion of each rule provision and the relevant comments is detailed below.

7 CFR 271.1: Program Purpose

Section 313 of the FRA amends SNAP's purpose statement in Section 2 of the Act to include assisting low-income adults in obtaining employment and increasing their earnings. The Department proposed to amend 7 CFR 271.1(a) to reflect the language added by the FRA to the SNAP purpose statement.

Twelve commenters, including 10 advocacy organizations and two members of the public, opposed changing the SNAP purpose statement due to their general opposition to work requirements for SNAP participants. Commenters noted that time limits are harmful to vulnerable individuals as they put access to food at risk during a time when they are needed. These commenters requested the Department make clear that raising the levels of nutrition among low-income households takes precedence over supporting employment. The Department recognizes the concerns raised by commenters, however, the change to the purpose statement was effective with the enactment of the FRA. The new language encouraging employment and earnings is in addition to the existing language around supporting food security and nutrition and the Department remains committed to supporting food security and nutrition for low-income households. As commenters did not provide comments regarding the way the Department proposed to amend the regulatory text to reflect this non-discretionary change, the Department is finalizing 7 CFR 271.1(a) to include the new statutory language. Due to Office of the Federal Register guidelines, the Department is also amending 7 CFR 271.1(a) to summarize rather than directly quote the statutory language in Section 2 of the Act.

7 CFR 273.24(c): Exceptions From the Time Limit

Age-Based Exception

Sec 311 of the FRA gradually increased the upper age limit of the age-based exception as follows: by September 1, 2023, increased from 50 to 51 years of age or older; starting October 1, 2023, increased from 51 to 53 years of age or older; and starting October 1, 2024, increases from 53 to 55 years of age or older. The FRA also prescribed that these changes to the age-based exception sunset on October 1, 2030. The Department proposed amending 7 CFR 273.24(c) to increase the upper age limit of the age-based exception from 50 years of age or older to 55 years of age or older. The Department also proposed to capture the sunset at 7 CFR 273.24(c)(10), which reflects that the upper age limit will return to 50 years of age or older on October 1, 2030, unless otherwise changed by law.

Fourteen commenters, representing ten advocacy organizations, three public citizens, and one State agency, opposed the increase of the upper age limit, citing that time limits undermine the effectiveness of SNAP and are not a viable solution to mitigate food security or bolster employment and earnings, especially for olde nr adults now subject to the time limit. Commenters noted that older individuals may have more difficulty obtaining employment and therefore, more difficulty in meeting the time limit. Commenters requested the Department assist State agencies in mitigating the potential for disproportionate impact upon older adults, including providing guidance around screening for exceptions from the time limit that may be less common in younger individuals. The Department understands and appreciates the concerns from commenters about maintaining program access for a vulnerable population. The final increase in the age-based exception is a non-discretionary change that was effective on October 1, 2024, and will remain in effect until October 1, 2030. As commenters did not provide comments regarding the way the Department amended regulatory text to reflect these changes, the updates at 7 CFR 273.24(c)(1) are finalized as proposed.

New Exceptions

Sec. 311 of the FRA adds three new exceptions from the time limit for individuals experiencing homelessness, veterans, and individuals aging out of foster care which will sunset on October 1, 2030. The Department proposed to add the three new exceptions to the list of exceptions from the time limit provided at 7 CFR 273.24(c)(7), (8), and (9), and capture the sunset at 7 CFR 273.24(c)(10).

Commenters were generally supportive of the addition of the three new exceptions. One advocacy organization urged the Department to extend the three new exceptions beyond October 1, 2030. The FRA stipulates that these three new exceptions and the increase in the age-based exception are to sunset on October 1, 2030. Therefore, only a statutory change can extend these exceptions beyond October 1, 2030. The Department is finalizing the sunset provision at 7 CFR 273.24(c)(10) as proposed. A discussion of comments received regarding each of the new exceptions is detailed below.

Individuals Experiencing Homelessness

The first of the three new exceptions provided in the FRA is for individuals experiencing homelessness. Sec. 3(l) of the Act and 7 CFR 271.2 provide an existing definition of ''homeless

[5] Posted public comments may also be found at regulations.gov (*https://www.regulations.gov/document/FNS-2023-0058-0001/comment* and *https://www.regulations.gov/document/FNS-2023-0058-0003/comment*).

individual'' for SNAP purposes. Under this definition, individuals are considered homeless if they lack a fixed and regular nighttime residence or if their primary nighttime residence falls into one of four categories. These categories include a primary nighttime residence that is a publicly or privately operated supervised shelter designed to provide temporary living accommodations, an institution that provides a temporary residence for individuals intended to be institutionalized, a temporary accommodation for not more than 90 days in the residence of another individual, or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The Department proposed to use the existing definition for ''homeless individual'' provided in 7 CFR 271.2 for the purposes of this exception and add a reference to this definition at 7 CFR 273.24(c)(7).

To help streamline application of this new exception, the Department also proposed a change at 7 CFR 271.2. This change clarified that an individual who will imminently lose their nighttime residence is considered homeless because they lack a fixed and regular nighttime residence. This reflects the Department's consideration that those who will imminently lose their primary nighttime residence are included in the Act's definition of a homeless individual, as a nighttime residence that will be imminently lost cannot reasonably be described as ''fixed and regular.'' Further, the language also helps ensure State agencies recognize how definitions employed by other public assistance programs may align with SNAP and identify individuals for the purposes of this exception more easily.

The Department received 17 comments on the definition of ''homeless individual.'' Commenters included 10 advocacy organizations, three policy organizations, two public citizens, one professional association, and one State agency. Though commenters were generally supportive of the inclusion of ''imminently homeless'' in the definition, they requested the Department provide additional details in the regulatory text.

Commenters asked the Department to provide a timeframe for what is considered ''imminently homeless'' under 7 CFR 271.2. They also requested additional circumstances be included in the regulatory text beyond the proposed inclusion of imminently homeless. This request was to ensure any definition is inclusive of vulnerable populations, such as individuals fleeing or attempting to flee domestic violence, individuals who were recently incarcerated, and individuals facing discrimination for being lesbian, gay, bisexual, transgender, queer, or intersex.

In the proposed rule, the Department included ''imminently homeless'' to better explain how State agencies can interpret a ''lack of a fixed and regular primary nighttime residence'' and clarify how the existing definition may align with definitions of other programs. Through implementing the FRA, the Department received questions from State agencies on how to help identify individuals now meeting this exception. One method to help identify these individuals was through other public assistance programs for individuals experiencing homelessness that the State agency also operates. These programs often use a definition for homeless individuals that explicitly includes individuals who are imminently homeless. Including this language at 7 CFR 271.2 helps State agencies identify opportunities to streamline with other programs by clarifying who is considered to ''lack a fixed and regular nighttime residence'' under the existing statutory definition. This change does not expand the regulatory definition beyond the statutory definition in the Act.

The Department understands that commenters are concerned with consistency across State agencies in applying this exception and the ''imminently homeless'' standard. The Department believes it is most appropriate to provide further technical assistance through guidance to State agencies and not specify additional detail in regulatory text. This preserves flexibility for State agencies to review how other assistance programs define homeless individuals and better coordinate across programs to identify SNAP participants who meet this exception and reduce administrative burden in verifying the exception, when appropriate. For example, the Department of Housing and Urban Development (HUD) considers individuals to be imminently homeless if they will lose their housing within 14 days, have no subsequent housing secured, and lack resources or support to secure subsequent housing. The Department agrees this definition would constitute an individual as experiencing homelessness for SNAP purposes. Further, the Department recommends State agencies consider aligning with HUD's current definition to streamline operations between programs and reduce administrative burden on households and State agencies. However, providing a specific timeframe or examples in regulatory text could unnecessarily restrict flexibility and make it more difficult for State agencies to align with other programs.

In using this flexibility, State agencies must incorporate safeguards into their processes for identifying individuals experiencing homelessness to ensure it does not include individuals who are simply facing a change in housing within a certain timeframe. If an individual is leaving their current residence for another fixed and regular nighttime residence, they would not be considered imminently homeless and would not qualify for the homeless exception. As discussed above, an individual who is imminently losing their housing is considered homeless if they lack a fixed and regular nighttime residence and therefore, would qualify for the homeless exception.

Section 3(l) of the Act also considers individuals who are in certain temporary living situations to be experiencing homelessness, including, but not limited to, those who are in the residence of another individual for no more than 90 days or a supervised shelter. These individuals would qualify for the homeless exception as well. For example, individuals fleeing or attempting to flee domestic violence, dating violence, sexual assault, or stalking who have no residence other than one shared with or known to the abuser or inadequate resources to secure housing would be considered homeless because they lack a fixed and regular nighttime residence. Similarly, an individual fleeing or attempting to flee domestic violence, dating violence, sexual assault, or stalking would be considered homeless if they secured a primary nighttime residence that is a temporary shelter or temporary accommodation of another individual.

Commenters also requested the Department to adopt HUD's definition of homeless individual and include a cross-reference to 42 U.S.C. 11302 at 7 CFR 271.2. The Department understands commenters desire for SNAP's definition of ''homeless individual'' to align more directly with that of HUD. While the Department supports State agencies applying the SNAP definition of ''homeless individual'' in a manner that aligns with the HUD definition, for reasons stated above, the Department is not codifying the HUD definition in regulatory language.

While the final rule does not explicitly incorporate the definition as requested by the commenters, the Department is committed to facilitating coordination across all Federal programs that interact with individuals experiencing homelessness, including

those administered by HUD. The Department encourages State agencies to review how various programs define homeless individual in their State and how they may leverage those definitions to identify, and if necessary, verify, individuals who are experiencing homelessness.

Two policy organizations and one public citizen opposed the changes to the definition of ''homeless individual.'' These commenters recommended the Department remove the inclusion of ''imminently homeless'' and finalize the rule with no changes to the definition of ''homeless individual.'' Two of these commenters asserted the definition in the proposed rule violates Congressional intent by stretching beyond the statutory definition in Sec. 3(l) of the Act. The Department disagrees that the inclusion of ''imminently homeless'' is an expansion of the definition of ''homeless individual.'' The existing definition defines individuals as homeless if they ''lack a fixed and regular nighttime residence,'' which encompasses the diverse set of circumstances that can constitute homelessness. The provision on ''imminently homeless'' is clarifying the types of individuals that may already be considered homeless under the existing definition because they lack a fixed and regular primary nighttime residence. The Department's clarification reflects the understanding of subject matter experts that work on homelessness issues and assists State agencies identifying individuals experiencing homelessness.

These same three commenters argued the inclusion of ''imminently homeless'' expands the definition of ''homeless individual'' to include those who ''might'' lose their housing. One commenter further stated that the proposed rule would undermine the time limit by exempting individuals who have no fixed or regular nighttime residence because they travel permanently and stay in vans, hotels, or short-term rentals, or are individuals whose income fluctuates and have rent due imminently. The Department also disagrees with these comments. The proposed rule specifies that individuals are considered homeless if they will imminently lose their nighttime residence. Individuals who might lose their housing are not considered ''imminently homeless.'' State agencies should review the individual's circumstances and determine if the individual's living arrangements constitute a lack of a fixed and regular nighttime residence.

Therefore, because the Department interprets a ''homeless individual'' to include those facing imminent homelessness and the need to preserve flexibility for State agencies, the Department is finalizing the changes to the definition at 7 CFR 271.2 ''Homeless individual'' as proposed. The Department will issue guidance on how State agencies can identify individuals experiencing homelessness and verify individuals' housing status.

In addition to the comments regarding the imminently homeless clarification, the Department also received four comments asking the Department to add a definition of ''shelter for homeless persons'' at 7 CFR 271.2 in the final rule. ''Shelter for homeless persons'' is referenced at 7 CFR 273.1(b)(7)(vi)(E), which exempts individuals living in a shelter for homeless persons from eligibility rules for individuals living in institutions. Commenters, including three advocacy organizations and one State agency, requested the Department specifically define ''shelter for homeless persons'' in relation to rules for individuals living in institutions. These commenters recommended the definition of ''shelter for homeless persons'' include any facility described in paragraph (2)(i) or (ii) of the proposed definition of ''homeless individual,'' including halfway houses for recently incarcerated individuals. While the Department understands commenters' concerns, creating a definition for ''shelter for homeless persons'' is not necessary to implement the FRA but the Department will take it under consideration for future rulemaking.

Veterans

The second new exception provided in the FRA is for veterans. The Department proposed a definition of veteran at 7 CFR 273.24(c)(8) to ensure individuals are identified consistently for this exception, as the FRA did not reference a definition of veteran and the Act and SNAP regulations do not include an existing definition. The Department proposed to define veteran at 7 CFR 273.34(c)(8) as an individual who, regardless of the conditions of their discharge or release from, served in the United States Armed Forces (such as the Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, and National Guard), including an individual who served in a reserve component of the Armed Forces, or served as a commissioned officer of the Public Health Service, Environmental Scientific Services Administration, or the National Oceanic and Atmospheric Administration.

The Department received 20 comments on the definition of veteran, with 18 of those comments supportive of the definition. Commenters included 12 advocacy organizations, two policy organizations, two professional associations, two State agencies, and two public citizens. Commenters appreciated the Department's alignment with other Federal programs by including commissioned officers of the Public Health Service, Environmental Scientific Services Administration, and the National Oceanic and Atmospheric Administration. Commenters also commended the Department's recognition of all individuals who served in the Armed Forces, regardless of the circumstances of their departure from the military.

However, one policy organization and one public citizen opposed the definition of veteran in the proposed rule because it differs from the definition used by the Department of Veterans Affairs (VA) for veterans' benefits eligibility. These commenters asserted the Department violates Congressional intent by not using this definition, and believe it is inappropriate to except individuals with other than honorable discharges. Additionally, one of these commenters took issue with the Department's use of a definition from Sec. 5126(f)(13)(F) of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 (Pub. L. 117–263). The commenter asserted the Department should not interpret this definition, which is for a program that provides food assistance to veterans and their families without restriction based on discharge status, to mean Congress does not consider discharge status to be relevant for veteran status.

The Department disagrees that the proposed rule's definition is inconsistent with Congressional intent. The FRA did not provide a specific definition of veteran, which led to confusion and questions from State agencies around how to identify individuals who meet this exception. The Department consulted with the VA to define veteran and provide clarity for State agencies. Based on the input of subject matter experts, the Department has determined that the definition from the FY 2023 NDAA is the most appropriate definition because it represents the most recent definition used to address food insecurity among veterans, which is the same goal for SNAP.

Further, the definition of veteran provided at 38 CFR 3.1(d) restricts veterans' benefits to individuals ''who served in the active military, naval, air, or space service and who was discharged or released under conditions other than dishonorable.'' Since the

FRA did not direct the Department to only apply the exception to a subset of veterans, such as those with honorable discharges, using the above definition would be more restrictive. In comparison, the definition used in the proposed rule does not restrict the exception based on discharge status.

The same two commenters disagreed with the Department's explanation that individuals with former military service who do not consider themselves to be veterans would still be considered veterans under this definition. Some individuals may not consider themselves a veteran, and therefore, may not seek out access to services for veterans, such as veterans' benefits, despite serving in the military. The FRA did not specify that the exception only applies to individuals who are receiving veterans' benefits or who personally identify as a veteran. Therefore, using the proposed definition of veteran appropriately aligns with the FRA and clearly communicates that all individuals who served in the military are eligible for the exception, regardless of their discharge status or self-identification as a veteran.

These commenters also claimed that using the definition at 38 U.S.C. 101(2) for veterans' benefits would allow State agencies to administer the exception more efficiently and effectively because it is more readily verifiable. The Department disagrees that the proposed definition would make program operations less efficient or effective. First, State agencies are not required to verify exception status, unless the information is questionable. Second, if verification is needed, State agencies can still easily verify veterans' status for individuals with an other than honorable discharge by a variety of means. State agencies must follow verification requirements provided at 7 CFR 273.2(f), which allow State agencies and individuals to use various types of verification, such as documentary evidence, data matches, or collateral contacts.

For the reasons described above, the Department is finalizing the definition of veterans at 7 CFR 273.24(c)(8) as proposed.

Individuals Who Were in Foster Care

The last new exception in the FRA is for individuals aging out of foster care. This exception applies to an individual who is 24 years of age or younger and was in foster care under the responsibility of a State on their 18th birthday or such higher age as the State has elected under Sec. 475(8)(B)(iii) of the Social Security Act. The Department proposed to adopt this definition at 7 CFR 273.24(c)(9) and included clarification that ''foster care under the responsibility of a State'' includes foster care programs run by Districts, Territories, or Indian Tribal Organizations, or the Unaccompanied Refugee Minors Program, and that the exception applies to individuals who turned 18 while in a foster care program even if they leave extended foster care before the maximum age.

The Department received 20 comments on the definition of individuals aging out of foster care, with 18 commenters supportive of the definition. Commenters included 12 advocacy organizations, two policy organizations, two professional associations, two State agencies, and two public citizens. Commenters were supportive of the clarified definition because it helps ensure vulnerable young adults facing unique barriers to food security and employment are not subject to the time limit. Commenters also expressed appreciation for the Department's inclusion of individuals who were in the care of Territories, Tribal Nations, and the Unaccompanied Refugee Minors Program within the definition.

Three commenters, including two advocacy organizations and one State agency, asked for additional clarification on certain groups' eligibility for this exception. These commenters requested the Department to allow State agencies to exempt youth that were incarcerated on their 18th birthday but were in foster care immediately prior. The two advocacy organizations also urged the Department to allow State agencies to exempt individuals who were in foster care but who ran away from foster care before turning 18. Individuals can be eligible for this exception if the child welfare or foster care agency considered them to be in foster care under the responsibility of the State when they turned 18, even if they were incarcerated or had run away prior to turning 18. In these more complicated situations, State agencies should review the individual's history with foster care and relevant state policies, to determine if they meet the criteria for the exception.

One public citizen opposed the definition. The commenter asserted that the Department's proposed definition was too broad and inconsistent with the FRA to allow the exception to cover individuals who leave extended foster care before the maximum age. The FRA defined an individual aging out of foster care as an individual who is 24 years of age or younger and who was in foster care under the responsibility of a State on the date of attaining 18 years of age or such higher age as the State has elected under section 475(8)(B)(iii) of the Social Security Act. The commenter interprets the ''or'' in ''date of attaining 18 years of age or such higher age as the State has elected'' to mean the Department must use the date on which the individual attains the maximum age of foster care in their State, either 18 years of age or higher if the State has elected. The Department disagrees with this commenter's interpretation of ''or.'' The use of ''or'' permits State agencies to exempt individuals who were in foster care when they were 18, either in an extended or ''regular'' foster care program, or when they reach the maximum age the State has elected. This allows an individual who left extended foster care early but who was in foster care at age 18 to still be eligible for this exception because they were in foster care when they turned 18. This is consistent with the Department of Health and Human Services' interpretation of the same language used in the Affordable Care Act to establish a mandatory Medicaid eligibility group serving youth formerly in foster care.[6] [7]

Therefore, the Department is finalizing the definition of individuals aging out of foster care at 7 CFR 273.24(c)(9) as proposed.

7 CFR 273.24(l): Verification of Exception Status

For many exceptions, individuals may have already demonstrated their status as homeless, an individual with disabilities, pregnant, etc., through participation in another program. Through shared operations, eligibility systems and data sharing agreements, State agencies may already have information available that would verify an individual's exception status. To ensure State agencies are using this information and deter imposing a redundant burden on these individuals, the Department proposed a requirement for State agencies to assist individuals when verification of exception status is needed by first exhausting all

[6] U.S. Department of Health and Human Services. Centers for Medicare & Medicaid Services. *Coverage of Youth Formerly in Foster Care in Medicaid (Section 1002(a) of the SUPPORT Act).* Washington, DC, 2022. Accessed August 2, 2024. *https://www.medicaid.gov/federal-policy-guidance/downloads/sho22003.pdf.*

[7] U.S. Department of Health and Human Services. ''Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid Premiums and Cost Sharing.'' 78 FR 4594 at 4604 (January 22, 2013). *https://www.govinfo.gov/content/pkg/FR-2013-01-22/pdf/2013-00659.pdf.*

information available to the State agency. The Department proposed this requirement at 7 CFR 273.24(l) to clarify this requirement is specific to verification of exception status when questionable and is not intended to replace existing processes State agencies use to assist households in obtaining verification for other household circumstances. The Department expects State agencies to use existing information available in their eligibility system or through data sharing agreements. State agencies are not required to establish new data sharing agreements. However, the Department highly encourages State agencies to determine ways to collaborate with other State agencies, improving the coordination and information sharing across programs.

The Department received 11 comments on the proposed verification requirements for State agencies, with all but one supporting the provision. Commenters included eight advocacy organizations, one policy organization, one State agency, and one public citizen. Commenters were supportive of the requirement for State agencies to employ all available information prior to asking individuals to provide sources for verification because it reduces the administrative burden on vulnerable populations, especially for those that may have difficulty providing documentary evidence of their exception status, such as individuals experiencing homelessness or individuals aging out of foster care. Commenters expressed appreciation for the Department's efforts to foster better collaboration across programs that improves coordination and data sharing.

Two advocacy organizations recommended the Department specify the sequence of steps State agencies should take when verifying exceptions from the time limit. Commenters believe this would help increase standardization across State agencies and lead to equitable treatment of time-limited participants. State agencies must accept self-attestation of exception status, and only need to take additional steps if information is considered questionable. If questionable, then the State agency would first review all available information, such as information already in the eligibility system or through data sharing with other programs, to determine if it can verify exception status. If the State agency is still unable to verify, then it would request the individual provide verification, such as documentary evidence or a collateral contact, to the State agency.

One policy organization asked the Department to clarify that State agencies must comply with existing standards for timely verification to ensure State agencies do not delay the review of already available information and provide individuals sufficient time to respond to additional requests for verification. The Department agrees that State agencies must comply with existing standards for timely verification provided at 7 CFR 273.2(f). This requirement includes requests for verification of questionable information. The State agency must provide itself sufficient time in reviewing available information at initial application and recertification so that, if needed, a household has at least 10 days to return additional verification, and the State agency can maintain timely application processing standards. The Department will work with State agencies in implementing this provision and monitor to ensure it does not adversely affect application and recertification processing timeliness.

One State agency commented that they appreciated the streamlining goal but were concerned it would increase burden for State agencies. This commenter requested the Department finalize the rule without the provision at 7 CFR 273.24(l) and instead maintain standards at 7 CFR 273.2(f)(5)(i) for verifying exception status. Program rules at 7 CFR 273.2(f)(5)(i) already require State agencies to assist cooperating households in obtaining verification. Such assistance includes, but is not limited to, utilization of data sharing agreements with other State agencies and information received from other public assistance programs operated by the State agency. The proposed rule included the new verification requirement to minimize unnecessary burden on individuals and improve efficiency in verifying exception status, especially during the certification period. Generally, State agencies are not required to verify exception status and should consider if self-attestation is sufficient. State agencies would only need to perform this review of existing information when exception status is questionable as deemed by a State agency per 7 CFR 273.2(f)(2). Further, the Department expects this verification provision to reduce burden on both clients and State agencies by lowering the number of actions needed to verify information and decreasing the wait time for the individual to provide sources of verification and for eligibility workers to verify the information.

The Department received an additional 23 comments asking for further direction on how State agencies verify exception status. Commenters included 13 advocacy organizations, four public citizens, two policy organizations, two State agencies, and two professional associations. Fifteen commenters urged the Department to require State agencies to accept self-attestation of exception status or to prohibit State agencies from always considering self-attestation of exception status as questionable. Commenters expressed concerns over State agency policies for self-attestation and questionable information impact on how State agencies act on changes in exception status during the certification period. Since these comments intersect with requirements to screen for exceptions from the time limit, these comments are discussed further in the screening section.

Three commenters, including one professional association, one policy organization, and one advocacy organization, requested the Department issue guidance for how to identify and verify if individuals meet an exception, especially for the three new exceptions. The Department has previously issued guidance to assist State agencies in identifying and verifying exception status. This includes ''SNAP Provisions of the Fiscal Responsibility Act of 2023—Questions & Answers #1'' and ''SNAP Provisions of the Fiscal Responsibility Act of 2023—Questions & Answers #2,'' which answered questions from State agencies and advocates on how to implement the FRA provisions.[8] [9] In this guidance, the Department provided examples of ways State agencies can verify the new exceptions, including but not limited to, official documentation from the military such as the DD Form 214 (Certificate of Release or Discharge from Active Duty) or military ID to verify veteran status or information from independent living coordinators who administer programs for supporting youth in and transitioning out of foster care to verify individuals aging out of foster care. The Department also clarified that State agencies may use information from

[8] U.S. Department of Agriculture. Food and Nutrition Service. *Supplemental Nutrition Assistance Program (SNAP)—SNAP Provisions of the Fiscal Responsibility Act of 2023—Questions and Answers #1.* Washington, DC, 2023. Accessed August 2, 2024. *https://www.fns.usda.gov/snap/provisions-fiscal-responsibility-act-2023-questions-and-answers-1.*

[9] U.S. Department of Agriculture. Food and Nutrition Service. *Supplemental Nutrition Assistance Program (SNAP)—SNAP Provisions of the Fiscal Responsibility Act of 2023—Questions and Answers #2.* Washington, DC, 2023. Accessed August 2, 2024. *https://www.fns.usda.gov/snap/provisions-fiscal-responsibility-act-2023-questions-answers-2.*

other programs it operates to verify exception criteria and highly encouraged State agencies to do so when that information is available.[10] The Department appreciates the difficulty in verifying some of these exceptions for both State agencies and individuals and that these are household circumstances previously not considered for SNAP. The Department is committed to providing technical assistance for these new exceptions and will continue to work with State agencies to streamline the verification process for exception status.

One advocacy organization and one State agency requested the Department amend 7 CFR 273.2(f)(2) and allow State agencies to use another State agency's attestation that the individual meets an exception, similar to what is done for verifying countable months received in another State. However, it is unnecessary to amend 7 CFR 273.2(f)(2). Nothing in program rules at 7 CFR 273.2(f) prohibits State agencies from using another State agency's attestation to verify an individual meets an exception. As such, State agencies are permitted to use another State agency's attestation to verify exception status.

The same two commenters asked the Department to allow individuals to meet the veteran's exception temporarily for 90 days while they await verification of their veteran status from the National Archives, U.S. Department of Defense, and the U.S. Department of Veterans Affairs. While individuals may experience delays in receiving documentation of veteran status, this type of documentary evidence is not the only way an individual can qualify and verify for the exception for veterans. State agencies must accept an individual's self-attestation that they meet the exception, unless it meets the State agency's guidelines for questionable information. If more verification is necessary, program rules at 7 CFR 273.2(f)(4) provide the various sources of acceptable verification, which includes documentary evidence and collateral contacts.

Therefore, for the reasons cited above, the Department is finalizing 7 CFR 273.24(l) as proposed.

7 CFR 271.2, 273.7(b)(3), and 273.24(k): Screening and Assigning Countable Months

To properly apply SNAP work requirements, State agencies must first evaluate individuals potentially subject to the time limit to determine if they are indeed subject to the time limit, or if they qualify for an exception. The Department refers to this process as ''screening.'' State agencies must perform a thorough screening to correctly apply the time limit or an exception and to ensure only the appropriate individuals accrue countable months.[11] The proposed rule added requirements for when this screening must occur and what steps State agencies must take prior to assigning countable months.

Commenters were generally supportive of or silent on the screening provisions overall. Nine commenters expressed support for the screening requirement while also noting that these provisions cannot guarantee individuals are not wrongly subjected to the work requirements, citing the complexity of the work requirement rules and concerns with State agency capacity to properly screen, especially for non-English speakers. The Department recognizes the commenter concerns and is committed to providing technical assistance for State agencies to ensure proper implementation of these screening provisions and compliance with language-access requirements. Three additional commenters appreciated that the screening provisions would ensure individuals have a right to a thorough screening before being subject to the time limit and would help State agencies identify which individuals are subject to the time limit in a timely manner. In addition to these general comments, the Department received more specific comments in support and in opposition of the various screening provisions, which are detailed in the following sections.

Definition of Screening

The Department proposed to amend the definition of ''screening'' at 7 CFR 271.2 to include determining if an individual meets an exemption from the general work requirements listed in Sec. 6(d)(2) of the Act or an exception from the time limit listed in Sec. 6(o)(3) of the Act.

Six commenters, representing three advocacy organizations, one policy organization, one professional association, and one State agency, expressed support for the amended definition of screening, stating that better consistency in screening will enhance program integrity and prevent against the improper application of the time limit. Two advocacy organizations requested the Department also require State agencies to conduct screenings orally. Commenters explained that State agencies cannot conduct a thorough and appropriate screening in writing, especially for more complex exceptions. Proper screening is one of the most important aspects of implementing the SNAP work requirements. The Department agrees that State agencies must have a plan on how to screen for exemptions from the general work requirement and exceptions from the time limit. However, requiring State agencies to perform screening orally in all cases can limit flexibility to respond to changing needs of SNAP participants and State agencies.

Screening requires State agencies to develop a clear process that includes training and guidance materials for eligibility workers. The Department recommends that State agencies conduct screenings orally as a best practice, as it allows eligibility workers to have a conversation with the applicant and ask follow-up questions where needed. However, State agencies should also consider what information it obtains via the application process, including the interview, that can assist eligibility workers in identifying and verifying an individual's exception status. This includes information obtained on the application, during the interview, in the eligibility system, or through data sharing with other assistance programs. State agencies should not rely solely on written materials to inform individuals of the exemptions from the general work requirements and exceptions from the time limit.

These commenters also noted that screening should predate the issuance of the written consolidated work notice and the oral explanation of the work requirements. Program rules at 7 CFR 273.7(c)(1)(ii) require State agencies to provide the consolidated work notice and oral explanation to individuals who are subject to the work requirements to explain all applicable work requirements and how to fulfill those requirements. Since State agencies cannot reasonably know what work requirements apply and what information to provide if it has not screened and determined what work requirements these individuals are required to meet, screening would likely occur before notification of the work

[10] U.S. Department of Agriculture. Food and Nutrition Service. *SNAP Use of Information Received from Other Public Assistance Programs.* Washington, DC, 2023. Accessed August 2, 2024. *https://fns-prod.azureedge.us/sites/default/files/resource-files/snap-use-info-other-pap.pdf.*

[11] A countable month is a month in which a person is receiving a full SNAP benefit allotment, is not meeting the time limit, and is not otherwise exempt (*i.e.,* the person is not meeting an exception from the time limit, is not living in an area covered by a waiver, is not receiving a discretionary exemption, does not have good cause for not meeting the work requirement, or is not in the month of notification from the State agency of a ''provider determination'' (from a SNAP E&T provider)).

requirements. The Department will continue to provide technical assistance and ongoing support to ensure State agencies are following the correct procedures for screening and applying the work requirements.

Therefore, the Department is not amending the definition at 7 CFR 271.2 ''Screening'' in response to these comments. However, the Department made one small technical clarification in the definition, adjusting ''an approvable E&T component'' to ''a part of the E&T program,'' as screening for referral to an E&T program occurs before participation in an E&T program as defined at 7 CFR 271.2.

The Department also received comments requesting additional guidance, checklists, and best practices for screening for exceptions. One State agency specifically asked the Department to issue guidance and best practices that ensures State agencies adequately screen for all exceptions, especially for the individuals newly subject to the time limit due to the increase in the age limit. The Department agrees that additional guidance will help State agencies screen consistently and will issue subsequent guidance that provides more best practices and guidelines. Additionally, the Department reminds State agencies of two existing guidance and technical assistance tools already available: the SNAP Work Rules Screening Checklists and Flow Chart and the SNAP Able-Bodied Adults Without Dependents Policy Guide.[12] [13]

Screening at Initial and Recertification Application

Prior to the FRA, State agencies needed to screen individuals at initial and recertification application to determine if household members are subject to the general work requirements and time limit. In implementing the FRA, the Department found sound screening practices to be key in proper administration of the new exceptions, as screening is the State agency's opportunity to identify exceptions and comply with the Act, which provides that individuals must not be subject to the time limit if they meet one of the exceptions listed in Sec. 6(o)(3).

The Department proposed adding 7 CFR 273.24(k) to require State agencies to screen households for all exceptions from the time limit at certification and recertification to ensure this important step happens consistently across State agencies. The Department also proposed to amend SNAP regulations at 7 CFR 273.7(b)(3) to require screening for all exemptions from the general work requirements at certification and recertification, as exemptions from the general work requirements confer an exception from the time limit as well. These provisions codify existing practices and clarify screening requirements to ensure compliance with the FRA and the Act. Additionally, the Department seeks to improve consistency in program operations and provide quality customer service in line with the December 13, 2021, Executive Order on *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.*[14]

The Department received 15 comments on the requirement to screen for exceptions from the time limit at initial application and five comments on the requirement to screen for exemptions from the general work requirements at initial and recertification application. Commenters included 12 advocacy organizations, three public citizens, one policy organization, one professional association, and one State agency. Commenters were generally supportive of the requirement, noting that these changes are key to bolstering screening practices and implementing the new exceptions to the time limit. Though commenters were supportive of the provisions, they requested the Department provide additional details in the regulatory text for both provisions.

Two commenters requested the Department use screening as a noun instead of as a verb, replacing references of ''screening'' with ''conduct a screening.'' These commenters stated that using screening as a verb is inconsistent with the definition in 7 CFR 271.2. The Department disagrees that this change is necessary. The use of ''screening'' as a verb in the proposed rule is consistent with other requirements to screen already included in 7 CFR 273.7(c)(2). Therefore, the Department is not changing any references to screening in 7 CFR 273.24(k).

Six commenters, including four advocacy organizations, one policy organization, and one professional association, urged the Department to require State agencies to assign the exception that will be in effect the longest when individuals qualify for more than one exception from the time limit. The same policy organization also requested the Department add the same requirement for exemptions from the general work requirements. In the proposed rule, the Department encouraged State agencies to assign the longest exception as a best practice when screening but did not require it. The Department agrees with commenters that assigning the longest exception helps maintain program access for individuals and lessen the workload for State agencies, resulting in reduced administrative burden and cost for both clients and State agencies. As such, the Department is adding a requirement for State agencies to apply the exception from the time limit that will last the longest at 7 CFR 273.24(k) and the exemption from the general work requirements that will last the longest at 7 CFR 273.7(b)(3).

One policy organization and one advocacy organization noted that the proposed rule would require State agencies to screen and determine if an individual meets ''an'' exemption from the general work requirements and recommended the Department change ''an'' to ''any.'' The Department agrees with these commenters that using ''an'' creates the possibility that a State agency could screen for just one exemption and fail to screen for others. The Department intended for State agencies to screen for all exemptions and to continue screening even once an individual meets one exemption. This is consistent with the requirement to apply the exception that is in effect the longest when an individual meets more than one exception. Therefore, the Department is amending 7 CFR 273.7(b)(3), as well as the definition of screening at 7 CFR 271.2, to clarify that State agencies must screen for all exemptions and exceptions.

Screening and Applying Exceptions During the Certification Period

When the FRA was implemented, the Department received questions from State agencies about how to identify, apply, and verify exceptions during an individual's certification period. Individuals can experience changes in circumstances during their certification period that may lead to them no longer qualify for an exception, such as turning

[12] U.S. Department of Agriculture. Food and Nutrition Service. *SNAP Work Rules Screening Checklists and Flow Chart.* Washington, DC, 2023. Accessed August 2, 2024. *https://www.fns.usda.gov/snap/work-rules-screening.*

[13] U.S. Department of Agriculture. Food and Nutrition Service. *SNAP Able-Bodied Adults Without Dependents (ABAWD) Policy Guide.* Washington, DC, 2023. Accessed August 2, 2024. *https://www.fns.usda.gov/snap/guide-serving-abawds-time-limit-participation.*

[14] ''Executive Order 14058 of December 16, 2021, Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government,'' **Federal Register**, volume 86, no. 239 (2021): 71357–71366, *https://www.federalregister.gov/d/2021-27380.*

18. Similarly, an individual may experience a change that results in them now meeting an exception, such as becoming homeless. To address these situations, the Department proposed 7 CFR 273.24(k)(1)(i) and (ii), which specified State agency responsibilities when an individual experiences a change in circumstances that results in them losing an exception or newly meeting an exception.

The Department received 15 comments in support of these screening requirements. Nine of those comments were particular to actions when an individual loses an exception, and six comments were specific to requirements when an individual is newly meeting an exception. Commenters included multiple policy organizations, advocacy organizations, and professional associations and two State agencies. Commenters appreciated the Department's efforts to improve screening practices by requiring State agencies to screen individuals before applying the time limit, helping ensure individuals have access to a thorough and timely screening. Commenters also applauded the Department's clarifications on when State agencies should assign countable months. However, some commenters also requested the Department further outline State agency responsibilities to meet these requirements during the certification period, which are discussed in detail in the sections below.

Two policy organizations opposed the provisions because they did not agree that the provisions are necessary to implement the FRA and questioned if they align with statutory obligations to enforce the time limit. One commenter further disagreed with prohibiting State agencies from assigning countable months unless it determines that the individual does not meet any exceptions. The commenter claimed this process would provide benefits to individuals who are not verified as eligible.

While the FRA requires State agencies to apply the new exceptions at initial application and recertification, State agencies were confused on how to act on information about the exceptions discovered during the certification period. Some of the questions raised included how State agencies account for individuals who appear to be newly subject to the time limit due to the changes in age-based exceptions, but the State agency has not screened to determine if they meet any exception. Since these individuals were not subject to the time limit at the time of their last certification, the State agency would likely not have any information on whether the individual meets another exception. Similarly, an individual subject to the time limit before the FRA could now be excepted as a veteran, however, the State agency may not know the individual is a veteran because the information is not collected during the application process. In both scenarios for ongoing households, the State agency could not properly determine if the individual should be subject to the time limit.

These questions are emblematic of questions about screening and assigning countable months during the certification period more broadly, and not just specific to operationalizing the new exceptions. In order to enforce the time limit, State agencies must first know who is subject to the time limit before they can determine if that individual is meeting the associated work requirements. Both pieces of information are needed before a countable month can be assigned correctly. If not, State agencies are liable to incur payment errors for either incorrectly penalizing a household, or inappropriately applying benefits. A State agency cannot reasonably know if the individual is subject to the time limit if it has not screened an individual for exceptions from the time limit. It is inconsistent with Sec. 6(o)(3) of the Act for a State agency to apply the time limit and assign countable months when it has not screened and determined an individual does not meet any exceptions from the time limit. As such, the Department found it necessary to provide additional clarification at 7 CFR 273.24(k) in order to address this confusion and ensure consistency amongst State agencies on how to accurately administer SNAP work requirements and maintain program integrity.

Assigning Countable Months

Three advocacy organizations and one State agency asked the Department to clarify additional circumstances not addressed in the proposed rule where State agencies must screen individuals before assigning countable months. These circumstances include when an individual loses the exemption from the general work requirements for working 30 hours per week, when an area loses a geographic waiver, or when a time-limited participant's work hours drop below 20 hours per week.

Individuals are not subject to the time limit if they meet an exception, which includes meeting an exemption from the general work requirements. Individuals who are working 30 or more hours a week or are earning weekly wages equal to at least the Federal minimum wages multiplied by 30 hours are exempt from the general work requirements, and therefore, are not subject to the time limit. If an individual has a change in circumstances during the certification that results in them not meeting this exemption, such as involuntarily quitting or reducing work hours, then the State agency must screen the individual and determine if they meet any other exceptions from the time limit, including any other exemption from the general work requirements, before assigning countable months. If the State agency is unable to reach the individual to screen during the certification period, the State agency must not begin assigning countable months as attempts to screen do not constitute screening for the exceptions.

Individuals who live in an area covered by a waiver of the time limit will not receive any countable months while covered by the waiver. State agencies must continue to screen individuals even when a waiver is in place to determine which individuals are subject to the time limit. If a State agency stops screening under a waiver, it is not able to accurately administer the time limit when the waiver ends. When the waiver does end, State agencies must ensure individuals who are subject to the time limit have been notified of the applicable work requirements and begin applying the time limit.

Individuals can fulfill the time limit by working, or by participating in a work program, for 20 hours per week, averaged monthly. Individuals who are meeting this 20 hour per week requirement are complying with the time limit but are still considered subject to the time limit. Therefore, when an individual reports their work hours drop below 20 hours per week without good cause, the State agency would assign a countable month. The State agency would have already determined if the individual is subject to the time limit and does not need to screen the individual again since they must screen at certification and recertification. If the individual has had a change in circumstances that results in them newly meeting an exception, the individual can report that information to the State agency at any time.

The same four commenters suggested the Department clarify that State agencies must issue expedited benefits to households and refrain from subjecting individuals to the time limit while the State agency completes screening. The same State agency further requested the Department amend expedited service rules at 7 CFR

273.2(i)(4) accordingly. The Act and program rules require State agencies to process applications that meet the expedited service criteria within seven days and postpone verification (if necessary) to meet this timeframe, as long as the State agency has verified identity. Program rules at 7 CFR 273.2(i)(4)(B) emphasize that State agencies must make all reasonable efforts to verify other information required by 7 CFR 273.2(f) through collateral contacts or readily available documentary evidence within the seven-day time frame.

State agencies should also make all reasonable efforts to screen individuals at certification and recertification within that seven-day time frame, especially when interviewing the individual. If the State agency screens the individual and determines they do not meet any exceptions from the time limit, the State agency would consider them subject to the time limit and begin assigning countable months in the first full month of benefits. If the State agency screens and determines the individual meets an exception from the time limit, the State agency would consider them not subject to the time limit and no verification is needed. This is because State agencies are not required to verify exception status unless it is questionable. If the information about exception status is questionable, the State agency must verify the information. The State agency would first follow the new process outlined at 7 CFR 273.24(l), which requires State agencies to use all available information to verify an individual's exception status before reaching out to the household. If the State agency is able to verify exception status via these means within seven days, it would apply the exception and the individual is not subject to the time limit. If the State agency is still unable to verify exception status within the seven days, the State agency would postpone verification of exception status in accordance with 7 CFR 273.2(i)(4). Because of this postponed verification, the State agency would not assign countable months until exception status is verified.

However, if an individual who has already received three countable months reapplies and the State agency has no information from the household or another source indicating that the individual has regained eligibility or is now meeting an exception, the State agency would determine that the individual remains ineligible for SNAP and is not eligible for expedited service. The State agency would then process the case according to normal application processing standards. If the State does have information from the household or another source indicating that they have regained eligibility or are now meeting an exception, the State agency must attempt to obtain as much verification as possible within the expedited service time frame. As noted above, State agencies do not need to verify exception status unless it is questionable, so the State agency may not need to postpone verification of exception status and can apply the exception at that time. If the verification cannot be obtained in the seven-day time frame, the State agency would postpone the verification in order to issue benefits. The State agency is responsible for making a determination of whether or not to postpone verification within these parameters.

In addition to commenter requests for clarification on the specific scenarios discussed above, six commenters, including two advocacy organizations, two policy organizations, and two State agencies, asked the Department to clarify if State agencies need to retrospectively assign countable months when an individual has a change in exception status during the certification period. Three commenters urged the Department to prohibit State agencies from retrospectively assigning countable months back to the date an individual lost their exception status. Three commenters also requested the Department to require State agencies to only assign countable months prospectively after screening. Commenters requested these clarifications because existing guidance requires State agencies to retrospectively assign countable months if the State agency determines at recertification that an individual lost their exception and should have been subject to the time limit, and also called for the Department to rescind this guidance.[15]

The Department understands these comments reflect concerns that individuals can accrue countable months and lose access to SNAP as a result, even when they were not required to report a change. The new screening provisions will mitigate these issues by limiting the assignment of countable months until after State agencies evaluate an individual and determine if they meet any other exception. Since State agencies must screen before assigning countable months, if it did not conduct a screening when the loss of the exception occurred, it cannot go back in time and retrospectively screen the individual. This means that in these situations State agencies should not retrospectively adjust countable months at recertification while complying with this screening requirement. If the State agency is unable to screen during the certification period, the State agency should wait until the next recertification to screen the individual, and then at that time, either apply another exception or begin applying the time limit. Further, the Department maintains it is important for program access and integrity to preserve State agencies' ability to retrospectively adjust countable months as a result of State agency or client error. As a result, it is not necessary to add language prohibiting retrospective adjustment of countable months to address the situations discussed by commenters.

One advocacy organization and one State agency requested the Department allow State agencies to retrospectively remove countable months back to the date an individual started meeting a new exception. The advocacy organization also asked the Department to permit State agencies to retrospectively apply exceptions back to the date it is reported instead of the date it is verified. As discussed above, the new screening provisions are intended to minimize the need for State agencies to retrospectively adjust countable months. The new provision at 7 CFR 273.24(k)(1)(ii) is clear on when State agencies should stop assigning countable months when an individual is newly meeting an exception: either after the State agency receives the information or after the State agency verifies the information if it was questionable. Further, screening is a forward-looking process and State agencies should not be going back to the previous certification period when screening an individual. As a result, State agencies should not need to retrospectively adjust countable months in most circumstances.

One policy organization opposed these provisions and requested the Department require State agencies to apply countable months immediately when an individual is found not to qualify for an exception or comply with a work requirement. This includes retrospectively applying countable months when the State agency receives this information at a later date. The Department agrees that State agencies must enforce the time limit and apply countable months for individuals who are subject to the time limit but are not

[15] U.S. Department of Agriculture. Food and Nutrition Service. Able-Bodied Adults without Dependents (ABAWD) Questions and Answer. Washington, DC, 2015. Accessed September 9, 2024. *https://www.fns.usda.gov/sites/default/files/resource-files/ABAWD-Questions-and-Answers-June%202015.pdf.*

meeting the requirement. Individuals subject to the time limit are required to report when their work hours fall below 20 hours per week, averaged monthly. If an individual fails to report this information and the State agency later determines it, the State agency must retrospectively adjust countable months.

Individuals are not subject to the time limit if they meet an exception from the time limit. During the certification period, individuals may experience changes that result in them losing an exception. Without additional screening, the State agency would only know about the change in circumstances for that one exception, but not if the individual meets another. As a result, loss of an exception alone does not provide the State agency with sufficient information to determine if the individual should now be subject to the time limit. This is especially true given the fluid nature of some of the exceptions, such as homelessness or pregnancy, which individuals may meet only temporarily. Therefore, the State agency must screen to determine if the individual meets another exception to know if the individual should be subject to the time limit and comply with Sec. 6(o)(3) of the Act, which requires State agencies to only subject individuals who do not meet an exception to the time limit.

For these reasons, the Department is not making any changes to 7 CFR 273.24(k)(1)(i) and (ii) and finalizing as proposed.

Acting on Changes During the Certification Period

Four commenters, including two advocacy organizations, one policy organization, and one State agency, requested clarification for how the screening provisions interact with rules for acting on changes during the certification period. These commenters urged the Department to include a cross-reference to unclear information rules at 7 CFR 273.12(c)(3) in both 7 CFR 273.24(k)(1)(i) and (ii). Unclear information is information that is not verified or is verified but the State agency needs more information to act on it. Program rules at 7 CFR 273.12(c)(3) outline the specific procedures State agencies must follow when acting on unclear information. Program rules for acting on unclear information apply to all changes occurring during the certification period, regardless of whether the paragraph includes a direct cross-reference to 7 CFR 273.12(c)(3). Further, a change in circumstances during the certification period will not always result in unclear information.

For individuals who are newly meeting an exception, State agencies may not always need additional information to act on a report of a new exception. This is because exception status does not require verification unless the State agencies deem it questionable. If verification is needed, the State agency must follow the new verification provision at 7 CFR 273.24(l) and first attempt to verify using all available information before reaching out to the household. This means that the State agency could potentially verify the information and apply the exception without ever needing to contact the household. If the State agency still cannot verify the new exception without contacting the household, then it would defer to unclear information rules at 7 CFR 273.12(c)(3) for contacting the household. The State agency would hold the information until the next certification action, unless the unclear information meets the criteria for sending a request for contact (RFC) at 7 CFR 273.12(c)(3). In most circumstances, a change in exception status is unlikely to meet the criteria for an RFC because it is not a required report under any reporting system. If the information does not meet the criteria for an RFC, State agencies may send a voluntary notice to individuals asking them to provide verification for a new exception but must not penalize individuals if they do not respond.

As a result of this new verification provision, one commenter also asked the Department to include a cross-reference to 7 CFR 273.24(l) in 7 CFR 273.24(k)(1)(ii). The Department agrees that State agencies must verify information on exception status in accordance with 7 CFR 273.24(l), even during the certification period. Therefore, the Department is adding a cross-reference to 7 CFR 273.24(l) to ensure State agencies follow the appropriate verification procedures during the certification period.

For individuals who lose their exception during the certification period, new language at 7 CFR 273.24(k)(1)(i) requires State agencies to screen individuals after they lose their exception before applying countable months. As the Department explained in the proposed rule preamble, State agencies can choose to hold this information until next recertification or attempt to screen the individual during the certification period. If a State agency attempts to screen but is unable to, the State agency must not penalize the individual for not responding. This aligns with unclear information rules, as discussed above. The Department also notes that State agencies cannot require the household to come into or contact the office per program rules at 7 CFR 273.2(e)(1) or send an RFC unless it meets the criteria outlined at 7 CFR 273.12(c)(3).

One policy organization opposed the Department's explanation of unclear information in the proposed rule and argued the application of unclear information procedures would create challenges for State agencies to enforce the time limit by not allowing State agencies to penalize individuals for failing to respond to voluntary notices. The commenter expressed concern that State agencies may hold information for up to two years under this process. The Department believes this commenter may misunderstand these requirements. First, the longest certification period individuals subject to the time limit may be eligible for is 12 months, and these individuals would not go more than six months without a review of their household circumstances. State agencies are permitted to set shorter certification periods for individuals subject to the time limit and many do so due to the nature of these households' circumstances and compliance with the time limit. Second, the proposed rule did not amend the rules for unclear information at 7 CFR 273.12(c)(3), which require State agencies to hold unclear information until the next certification action and prohibit them from penalizing individuals for not responding to a voluntary notice. These requirements already exist, and the proposed rule only clarified how State agencies must adhere to unclear information rules when screening for exceptions and enforcing the time limit.

Therefore, the Department is not making any additional changes to 7 CFR 273.24(k)(1)(i) and (ii).

Self-Attestation and Questionable Information

Commenters also asked the Department to clarify the process for applying and verifying a new exception during the certification period. Two advocacy organizations requested the Department provide a timeframe for ''prompt action'' to protect against interruption or termination of benefits. Prompt action is already used at 7 CFR 273.12(c) in relation to acting on changes during the certification period. Introducing a separate time frame here would cause confusion. State agencies should instead ensure their processes for requesting verification of an exception during the certification period align with prompt action for acting on changes.

Two advocacy organizations and one policy organization urged the Department to remove the reference to ''questionable information'' and replace it with different language, such as contradictory information or inconsistent information. Commenters were concerned that using ''questionable information'' in this provision would invite State agencies to always consider self-attestation as questionable and require verification of exception status, increasing the burden on individuals to claim an exception. Similarly, 15 commenters, including 11 advocacy organizations, two private citizens, one professional association and one State agency, requested the Department prohibit State agencies from universally considering self-attestation of exception status to be questionable and instead require State agencies to accept self-attestation of exception status, unless the information is contradictory or inconsistent. Commenters expressed concerns that State agencies would set a policy that self-attestation of exception status is always questionable, when in most cases, self-attestation is sufficient to confirm an individual meets an exception and providing verification would create substantial burden, especially for vulnerable populations, such as individuals experiencing homelessness, who may not have access to documents and records for verification.

Program rules at 7 CFR 273.2(f) require State agencies to verify certain factors, including, but not limited to, income, identity, and residency. These rules also require State agencies to verify any information the State agencies consider to be ''questionable'' (7 CFR 273.2(f)(2)) and permit State agencies to require verification of additional factors at their discretion (7 CFR 273.2(f)(3)). State agencies must treat verification of questionable exception status consistent with verifications of other types of questionable information.

While State agencies have discretion to set guidelines for the additional verifications and for questionable information, State agencies cannot prescribe verification based on race, religion, ethnic background or national origin and cannot set guidelines that target specific groups, such as migrant farmworkers, for more intensive verification. In other words, State agencies may not set verification standards that target certain participants as a group in a discriminatory manner for more intensive verification by always requiring verification of exception status for time-limited participants. This includes setting standards that categorically consider self-attestation of exception status to be questionable.

Per SNAP verification rules, State agencies should determine on a case-by-case basis if the information provided by an individual meets the State agency's criteria for questionable information, regardless of whether it is provided via self-attestation. The Department reminds State agencies that placing additional and unnecessary burden on the applicants to provide verification may put these vulnerable individuals at risk, and State agencies must accept self-attestation of exception status unless it meets the State agency's guidelines for questionable information.

One policy organization requested the Department require verification of exception status in all circumstances because self-attestation results in fraud and waste. Similarly, another commenter asserted this will exacerbate the problems of improper payments. However, the commenters did not provide evidence to show that self-attestation leads to fraud and waste in SNAP. The Act and program rules at 7 CFR 273.2(f)(1) do not require State agencies to verify exception status, unless the information is considered questionable. As the Department discusses above, State agencies have discretion for determining what information is considered questionable and what other information it decides to verify, as long as the policy does not discriminate against or target any group for more intensive verification.

As a result, the Department is not making any changes to 7 CFR 273.24(k)(1)(ii) in response to commenter concerns on questionable information.

7 CFR 273.24(g) and (h): Discretionary Exemptions

Annual Allotment of Exemptions

Sec. 312 of the FRA decreases State agencies' annual allotment of discretionary exemptions from 12 percent to 8 percent of the caseload subject to the ABAWD time limit. The Department proposed to amend 7 CFR 273.24(g)(3) to reflect this reduction in the allotment of discretionary exemptions from 12 percent to 8 percent of covered individuals in the State.

Fourteen commenters, including 10 advocacy organizations, two private citizens, one professional association, and one State agency, opposed the decrease in the allotment of discretionary exemptions because it would reduce the State agencies' effectiveness to respond to the needs of households. Commenters cited the importance of discretionary exemptions in providing benefits to individuals who are in transition and in helping State agencies respond to local crises that temporarily impact employment opportunities in the State, such as a large employer closing or a natural disaster interrupting labor markets. The change in the annual allotment of discretionary exemptions is statutory requirement and was effective with FY 2024 allotment of exemptions.

Three commenters, including one advocacy organization, one professional association, and one State agency, also urged the Department to revise the methodology for calculating the proportion of time limited participants covered by ABAWD waivers used to calculate the allotment of discretionary exemptions, referred to as the ''waiver factor.'' Sec. 6(o)(6)(F) of the Act and SNAP regulations at 7 CFR 273.24(g)(3) require the Department to calculate State agencies' annual allotment of discretionary exemptions each fiscal year, based on the size of the ABAWD caseload, adjusted for changes in the growth of the SNAP caseload and the waiver factor. The professional association asked the Department to reconsider the reference date used to estimate State agencies' waiver status for the fiscal year. The other two commenters requested the Department consider allowing State agencies to request its waiver factor be recalculated when the State agency's implements a new ABAWD waiver during the fiscal year. However, changes to the methodology for calculating discretionary exemptions are outside the scope of this rulemaking. Further, the current reference date of July 1 aligns with data periods used to estimate the size and growth of the ABAWD caseload and allows the Department to make the best estimate of a State agency's overall SNAP and ABAWD caseload.

The Department also received one comment from an advocacy organization urging the Department to require State agencies to justify any non-use of discretionary exemptions and demonstrate that the non-use did not contribute to food insecurity. The Act provides State agencies with discretion on if and how they want to use discretionary exemptions. In some instances, State agencies are unable to use discretionary exemptions because the State is covered by a waiver of the time limit or because of restrictions implemented by their State legislature. As the Act does not require State agencies to use these exemptions, it is inconsistent to impose additional

requirements and administrative burden by mandating State agencies use discretionary exemptions or explain why they have not used them. The Department appreciates this commenter's concerns and remains committed to engaging with State agencies and providing technical assistance to ensure proper implementation of the SNAP work requirements.

As commenters did not provide comments within the scope about the way the Department amended regulatory text to reflect these changes and for the reasons stated above, the rule finalizes the updates at 7 CFR 273.24(g)(3) as proposed.

Carryover of Unused Exemptions

Sec. 312 of the FRA also limits State agencies' ability to only carryover unused discretionary exemptions earned in the previous fiscal year. The Department also proposed to amend 7 CFR 273.24(h)(2)(i) to limit carryover of unused discretionary exemptions to only those earned for the provision fiscal year starting in FY 2026.

Two advocacy organizations and one State agency requested the Department codify, that for the purposes of carryover, discretionary exemptions are used in order of accrual. This means discretionary exemptions are used in a ''first-in, first-out'' basis, such that State agencies would first use any unused exemptions carried over from the previous fiscal year since those were earned first. Once the State agency exhausts those exemptions, it would start using exemptions from the balance of newly earned exemptions for the current fiscal year. Any leftover exemptions from the current fiscal year would be carried over into the next fiscal year. Prior to the FRA, the Department had no need to specify the order of use because all unused exemptions from prior fiscal years were carried over. With the introduction of carryover limited to only the previous year, the Department agrees that the order of use must now be specified in regulation, ensuring State agencies' are able to carryover unused exemptions as allowed by the Act. Therefore, in the final rule, the Department is revising the regulatory language at 7 CFR 273.24(h)(2)(i) to clarify that for the purposes of determining carryover, discretionary exemptions are used in order of accrual (first-in, first-out).

One public citizen asserted the Department must further amend regulations to comply with the carryover limitations in the FRA. First, the commenter took issue with the Department's explanation that State agencies would carryover their historical balance of discretionary exemptions into the subsequent fiscal year for FY2024 and FY2025. In particular, the commenter does not agree with the Department's concept of a historical balance of discretionary exemptions.

There are two parts to a State agency's available allotment of discretionary exemptions: (1) the fiscal year allotment and (2) any carryover exemptions. Prior to the FRA, the Act did not require the Department to distinguish between the two parts because State agencies could carryover all unused exemptions from prior years. As a result, State agencies would receive a new allotment of discretionary exemptions each fiscal year that was added to their available balance of unused exemptions, hence the concept of a ''historical balance'' of exemptions. Each time the State agency had unused discretionary exemptions, they became part of the total number of exemptions available to the State agency during the next fiscal year.

The FRA introduced the prohibition on accumulating unused exemptions beyond the subsequent fiscal year during FY 2024 and beyond. This means that State agencies' available discretionary exemptions, including both the newly earned in fiscal year and any carryover, will have a two-year shelf-life because State agencies cannot accumulate unused exemptions beyond the subsequent fiscal year. As the restrictions on carryover begin during FY 2024, State agencies could use newly earned exemptions and their already accumulated historical balance in FY 2024. Then, in FY 2025, State agencies could carryover any unused exemptions from FY 2024, which includes the newly earned exemptions and the historical balance. Finally, in FY 2026, the historical balance provided in FY 2024 would expire because of the subsequent fiscal year restriction and only unused exemptions earned in FY 2025 could carryover.

Second, the commenter contended that the Department must repeal existing language at 7 CFR 273.24(h)(2)(i) to sufficiently limit carryover as prescribed by the FRA. Program rules at 7 CFR 273.24(2)(i) specify that the Department will increase the estimated number of exemptions allocated to a State agency when the State agency does not use all of its exemptions by the end of the fiscal year. The proposed rule did not repeal or modify the existing language at 7 CFR 273.24(h)(2)(i) but rather added language that limits carryover to only unused exemptions earned in the previous fiscal year in accordance with the FRA. The commenter contended that failing to remove this language would allow the Department to continue unlimited carryover of discretionary exemptions.

The Department disagrees that the rule must repeal the existing language at 7 CFR 273.24(2)(i) to sufficiently modify this provision to reflect the FRA. The proposed rule clarifies that starting in FY 2026, carryover will now be limited to only unused exemptions earned in the previous fiscal year. The existing language does not state that carryover is unlimited, but rather that the Department will adjust the allocation of discretionary exemptions based on the number of unused discretionary exemptions from the previous fiscal year. The Department proposed to amend 7 CFR 273.24(h)(2)(i) to clarify the change in State agencies' ability to accumulate and carryover unused exemptions in accordance with the FRA.

Since there is no contradiction that would allow for unlimited carryover, the Department is finalizing 7 CFR 273.24(h)(2)(i) with only one change to account for first-in, first-out use of carryovers.

Procedural Matters

Executive Orders 12866, 13563, and 14094

Executive Orders 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rulemaking has been determined to be significant under Executive Order 12866, as amended by Executive Order 14094, and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis Summary

A Regulatory Impact Analysis (RIA) that includes both with-statute and without-statute comparisons was developed for this final rule. It follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis:

When compared to a without-statute baseline, the Department estimates the total increase in federal transfers (SNAP

benefit spending) associated with the provisions of this final rule to be approximately $3.5 billion over the nine years Fiscal Year (FY) 2023–FY 2031, averaging $393.1 million per year. This is the net result of a reduction in transfers of $5.1 billion by terminating benefits to about 1.8 million individuals, a reduction to the benefits of 123,000 individuals of $149.1 million, and an increase in transfers of $8.7 billion due to about 2.6 million individuals meeting exceptions from the time limit. Over the nine-year period FY 2023–FY 2031,[16] federal administrative costs (not including transfers) are estimated to total approximately $283.9 million, or an annual average of $31.5 million. Total State agency administrative expenses are also estimated to be approximately $283.9 million over the nine-year period, or an annual average of $31.5 million. Costs associated with administrative burden to individual SNAP participants are estimated to be approximately $358.3 million over the nine-year period, or an annual average of $39.8 million.

This final rule will primarily affect SNAP participants who are subject to the ABAWD time limit, which the Department estimates to be, upon full implementation of the FRA's provisions in FY 2026, approximately 9.2 percent of SNAP participants. However, far fewer will lose eligibility for SNAP. Hence, most SNAP participants will not be affected by this final rule. The estimated net impact of the final rule's change in the age-based exceptions and three new exceptions is a net increase in SNAP participation of about 89,000–95,000 individuals per year when fully implemented. In FY 2026, this includes 301,000 participants losing eligibility, 367,000 participants retaining eligibility through one of the new exceptions, and about 29,000 new participants.

When compared to a with-statute baseline, the Department estimates the net total cost of the final rule to be $58.1 million over the nine-year period FY 2023–FY 2031, averaging $6.5 million per year. The total cost includes approximately $29 million in State agency administrative expenses and approximately $29.1 million in total federal administrative costs. There are no estimated impacts to benefit transfers or to participant burden when using a with-statute baseline.

[16] A nine-year analysis period is used to align with the implementation and sunset periods established by the FRA. See discussion of baseline and time horizon of analysis in the Regulatory Impact Analysis for more detail.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Section 605(b) of the Regulatory Flexibility Act stipulates that the requirements to prepare and publish an initial and final regulatory flexibility analysis ''shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The Department has certified that this rule would not have a significant impact on a substantial number of small entities because the changes required by the regulations are directed toward State agencies operating SNAP programs.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year, updated annual for inflation. In 2024, that threshold is approximately $183 million. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $183 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.551 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) Since SNAP is State-administered, FNS has formal and informal discussions with State and local officials on an ongoing basis regarding program requirements and operations. This provides USDA with the opportunity to receive regular input from program administrators and contributes to the development of feasible program requirements. For example, SNAP participated in three webinars covering FRA implementation and responded to State agency questions and concerns over implementation. SNAP also is providing ongoing technical assistance with State agencies covering implementation of the FRA and work requirements more generally.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

In the proposed rule, the Department determined this rule did not have federalism implications and no federalism summary was required. One commenter expressed opposition to the Department's determination that the proposed rule would have no federalism implications under the requirements of Executive Order 13132. The commenter asserted that the compliance costs and the increased administrative costs that the proposed rule would impose could have substantial direct effects on the States and on the relationship between the national government and the States. Therefore, the commenter concluded that a federalism summary is required before the proposed rule can be finalized.

The Department disagrees with this commenter. Section 6(b) of Executive Order 13132 states ''To the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications, that imposes substantial direct compliance costs on State and local governments, and that is not required by statute, unless . . . .'' Further, Section 6(b)(1) of Executive Order 13132 provides an exception from 6(b) if the ''funds necessary to pay the direct costs incurred by the State and local governments in complying with the

regulation are provided by the Federal Government.'' This rule reflects changes already in effect and required by statute (the FRA), and therefore, are not subject to Section 6(b)(2)(B) of Executive Order 13132. The direct compliance costs to State agencies for the discretionary provisions are not substantial, as these reflect processes already in practice and administrative costs are split equally between the federal and State governments. Further, the revised verification procedures may also help to streamline State agency processes and reduce burden on State agencies and households. Therefore, the Department maintains that this rule has no federalism implications, and no federalism summary is needed.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the final rule, in accordance with Departmental Regulation 4300–004, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the final rule might have on program participants on the basis of race, color, national origin, sex (including gender identity and sexual orientation), religious creed, disability, age, political beliefs.

The Department believes that the provisions of the FRA and the requirements for verification and screening will have a potential impact on certain protected groups as it relates to SNAP work requirements. The Department also believes that the addition of the new exceptions will provide greater and continuous access to SNAP benefits for SNAP applicants and participants. The Department finds that the implementation of mitigation strategies and monitoring will lessen these impacts. The Department has collaborated with the Equal Employment Opportunity Commission to develop mitigation strategies to support protected classes that may be adversely impacted. The Department will continue to provide guidance and technical assistance to State agencies and Regional Offices on the FRA and will provide additional assistance after the publication of the rule explaining the provisions on the final rule. The Department will also monitor State agencies compliance with the provisions in the final rule and collaborate with Regional Offices to ensure State agencies are applying the provisions of the rule fairly, equitably, and consistently throughout the State.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FNS provided an opportunity for consultation on March 15, 2024. The Tribes had minimal comments, but one Tribe raised two concerns. First, the Tribe described the challenges and burden that former foster care youth face in obtaining formal documentation needed to verify that they were in foster care, especially in rural areas. FNS appreciates these concerns and the proposed requirements in this rule are intended to reduce this burden on individuals by requiring the State agency to use information already available to verify exception status. Second, the Tribe raised concerns over the decrease in the allotment of discretionary exemptions from 12 to 8 percent of the ABAWD caseload. FNS recognizes this concern, however, the decrease in discretionary exemptions is a statutory provision of the FRA and therefore, cannot be changed by this rulemaking.

If a Tribe requests further consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The Department is requesting a revision for OMB Control Number 0584–0479 for these new, existing, and changing provisions in this rule. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. Additionally, when the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Title: Supplemental Nutrition Assistance Program: Work Requirements and Screening.

OMB Number: 0584–0479.

Expiration Date: 2/28/2026.

Type of Request: Revision to an existing collection.

Abstract: This final rule would amend SNAP regulations to implement changes made by the Fiscal Responsibility Act (FRA) of 2023. Some of the changes would modify current regulations resulting in an increase in the reporting burden for State agencies, while others will result in no change.

The FRA amended the exceptions from the time limit, increasing the upper limit of the age-based exception from 50 to 55 over two years and adding three new exceptions for homeless individuals, veterans, and individuals aging out of foster care. The changes to the age-based exception will result in an increase in the number of individuals subject to the time limit, while the new exceptions will result in a decrease. The Department estimates a net increase in the number of individuals subject to the time limit. As a result, the Department estimates an increase in burden for State agencies and individuals. The Department anticipates additional burden related to verification of work hours and countable months, issuance and review of the Consolidated Work Notice, and the review of the oral explanation of the work requirements for individuals newly subject to the time limit. The Department also anticipates additional burden related to the issuance and review of the Notice of Adverse Action for individuals newly subject to the time limit who reach three countable months and become ineligible. The Department is accounting for this net increase in individuals subject to the time limit and the resulting additional burden in this information collection.

The FRA amended the SNAP program purpose to include assisting low-income individuals in obtaining employment and earnings. The Department does not anticipate any burden related to this change. The FRA also reduced the annual allotment of discretionary exemptions and reduced carryover of

unused exemptions. The Department does not estimate any change in burden related to reporting of discretionary exemptions, which is covered under OMB Control Number 0584–0594 (Food Programs Reporting System (FPRS); expiration date: 09/30/2026).

In addition to implementing the provisions of the FRA, this final rule establishes regulations that require State agencies to screen individuals for exemptions from the general work requirements and exceptions from the time limit. Currently, State agencies are required to screen individuals for exemptions from the general work requirements and exceptions from the time limit at initial and recertification application. However, this requirement is not captured in regulations and the related burden not captured in any existing information collection. The Department is including new burden related to screening in this information collection, which is required to ensure State agencies apply time limit policy correctly. One professional association expressed concern that the Department did not account for an increased burden stemming from the reduction in the annual allotment of discretionary exemptions and the limitations on carryover. However, prior to the FRA, State agencies used discretionary exemptions to extend benefits for specific populations that are now exempt from the time limit, such as individuals that are experiencing homelessness. As a result, this will reduce the need for State agencies to use discretionary exemptions cover individuals after they lose an exception during the certification period and reduce the number of actions State agencies must take on a case.

This final rule also requires State agencies to use all available information to verify exception status, when questionable, before requiring individuals to provide verification. The Department does not anticipate a change in the burden related to the verification of questionable information, which is covered under OMB Control Number 0584–0064 (SNAP Forms: Applications, Periodic Reporting, Notices; expiration date: 06/30/2027). The Department received two comments on the estimated burden related to verification of exception status. One State agency and one professional association expressed concern that the rule would increase burden of verifying information for State agencies. Because State agencies are not required to verify exception status unless it is questionable and they cannot discriminate or target one group when setting guidelines for what information is questionable, the Department does anticipate that increase in the number of time-limited participants would necessarily mean a substantial increase in burden and cost related to verification of questionable information. Further, the rule included the new verification requirement to minimize unnecessary burden on individuals and improve efficiency in verifying exception status, especially during the certification period. As a result, the Department anticipates a slight increase in burden related to verification of questionable exception status, which will be offset by a decrease in burden related to the verification provision of this final rule and the Department is making any changes to the burden estimates for verification of questionable information in OMB Control Number 0584–0064.

The Department also anticipates start-up burden related to the statutory and regulatory changes. State agencies will need to update their eligibility systems and notices to include the new exceptions and changes to the age-based exception. State agencies will also need to update their policy manuals and documents with the changes to ABAWD eligibility and the screening requirements. Lastly, State agencies will need to develop and provide training on the new requirements to State agency staff.

These new requirements necessitate a revision to OMB Control Number 0584–0479 (Expiration Date: 02/28/2026). The Department is seeking a three-year renewal of OMB Control Number 0584–0479 with the Final Rule. OMB Control Number 0584–0479 currently covers burden related to preparation and submission of time limit waivers. Time limit waivers are submitted via the Waiver Information Management System (WIMS), and the burden for this submission is covered which is covered under OMB Control Number 0584–0083 (Operating Guidelines, Forms, Waivers, Program and Budget Summary Statement; expiration date: 9/30/2026). The final rule does not make changes to burden covered under OMB Control Number 0584–0083. Due to the addition of new burden items, the Department is changing the title of 0584–0479 to ''Supplemental Nutrition Assistance Program: Work Requirements and Screening.''

The Department has updated the burden and cost estimates based on more recent data on SNAP participation and labor rates. The Department did not need to make any adjustments to the burden and costs estimates as a result of comments on the proposed rule or changes in the final rule.

Start-Up Burden

Respondents: State Agencies.

Estimated Number of Respondents: 53 State Agencies and 105,030 eligibility workers.

Estimated Number of Respondents per Respondent: One (1) response.

Estimated Total Annual Burden on Respondents: 469,177 hours, an increase of 469,177 hours from current inventory of 0 hours in 0584–0479.

Ongoing Burden

Respondents: State Agencies and Individuals.

Estimated Number of Respondents: 53 State Agencies and 29,778,855.42 Individuals.

Estimated Number of Respondents per Respondent: 609,811.75 responses per State Agency and one (1) per Individual.

Estimated Total Annual Burden on Respondents: 4,032,013.61 hours (2,016,588.31 hours for State Agencies and 2,015,425.31 hours for Individuals), an increase of 4,030,850.61 hours from current inventory of 1,163 hours in 0584–0479.

The total burden for this rulemaking is 4,501,190.61 burden hours and 59,662,934.85 total annual responses. This represents an increase to the burden hours for OMB Control Number 0584–0479, resulting in a total inventory of 4,091,394.24 burden hours (4,504,707.61 new burden hours + 1,163 existing burden hours) and 59,662,934.85 responses (59,662,899.85 new responses + 35 existing responses).

BILLING CODE 3410–30–P

Activity	Citation	Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden	Previously Approved Burden Hours	Change in Burden Hours Due to Program Change	Total Change in Burden Hours
A	B	C	D	E = C x D	F	G = E x F	H	I = (G x H) / 2	J	K = G - J	L = J + K
Start-Up Burden											
Affected Public: State Agencies											
Update of eligibility system with new requirements (including coding for modified exceptions, updating language on the Notice of Adverse Action and Consolidation Work Notice)	7 CFR 273.24(c)(7), (8), (9), and (10)	53	1	53	4,729	250,637	$52.96	$13,273,885.90	0	250,637	250,637
Update policy manuals, guidance, and other documents with new requirements	7 CFR 273.24(c)(7), (8), (9), and (10), 273.24(k), 273.24(l), 273.7(b)(3)	53	1	53	80	4,240	$53.09	$225,116.86	0	4,240	4,240
Develop and provide training to staff on new requirements	7 CFR 273.24(c)(7), (8), (9), and (10), 273.24(k), 273.24(l), 273.7(b)(3)	53	1	53	80	4,240	$53.09	$225,116.86	0	4,240	4,240
Take training on new requirements	7 CFR 273.24(c)(7), (8), (9), and (10), 273.24(k), 273.24(l), 273.7(b)(3)	105,030	1	105,030	2	210,060	$32.15	$6,752,609.77	0	214,740	214,740
Reporting Burden Total for Start-Up Burden		**105,083**	**1**	**105,189**	**4.46**	**469,177**	**$43.64**	**$20,476,729.40**	**0**	**473,857**	**473,857**
Ongoing Burden											
Affected Public: State Agencies											
Applying Modified Exceptions											

Activity	Citation	Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden	Previously Approved Burden Hours	Change in Burden Hours Due to Program Change	Total Change in Burden Hours
Additional verification of hours worked and countable months in another State at initial or recertification application for ABAWDs newly subject to the work requirement	7 CFR 273.2(f)(1), (f)(2), and (f)(8)(i)	9,757.93	517,171	0.0917	47,407	$32.15	$1,523,959.67	0	47,407	47,407	9,757.93
Additional issuance of the Consolidated Work Notice for ABAWDs newly subject to the work requirement	7 CFR 273.7(c)(1)	9,757.93	517,171	0.083	43,098	$32.15	$1,385,417.88	0	43,098	43,098	9,757.93
Additional review of the oral explanation of the work requirements for ABAWDs newly subject to the work requirement	7 CFR 273.7(c)(1)	9,757.93	517,171	0.083	43,098	$32.15	$1,385,417.88	0	43,098	43,098	9,757.93
Additional issuance of the Notice of Adverse Action for ABAWDs newly subject to the work requirement who do not meet it	7 CFR 273.13(a)	5,321.81	282,056	0.067	18,804	$32.15	$604,466.69	0	18,804	18,804	5,321.81
Screening Requirements											
Screening for exemptions from the general work requirement at initial application	7 CFR 273.7(b)(3)	53	312,245.28	16,549,000	0.067	1,103,267	$32.15	$35,465,720.59	0	1,103,267	1,103,267
Screening for exemptions from the general work requirement at recertification application	7 CFR 273.7(b)(3)	53	49,789.96	2,638,868	0.067	175,925	$32.15	$5,655,287.48	0	175,925	175,925
Screening for exceptions from the ABAWD work requirement and time limit at initial application	7 CFR 273.24(k)	53	97,735.85	5,180,000	0.067	345,333	$32.15	$11,101,119.87	0	345,333	345,333

Activity	Citation	Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden	Previously Approved Burden Hours	Change in Burden Hours Due to Program Change	Total Change in Burden Hours
Screening for exceptions from the ABAWD work requirement and time limit at recertification application or during the certification period	7 CFR 273.24(k)	53	67,498.49	3,577,420	0.067	238,495	$32.15	$7,666,673.40	0	238,495	238,495
ABAWD Waivers											
Preparation and submission of Labor Market Data to support ABAWD waiver request	7 CFR 273.24(f)	33	1	33	35	1,155	$32.74	$37,820.01	1,155	0	0
Preparation and submission of Labor Surplus Area designation or EB Trigger Notice criteria to support ABAWD waiver request	7 CFR 273.24(f)	2	1	2	4	8	$37.38	$299.06	8	0	0
Reporting Burden Sub-Total for Ongoing Burden to State Agencies		**53**	**561,865.86**	**29,778,890.42**	**0.068**	**2,016,588.31**	**$32.13**	**$64,788,063.48**	**1,163**	**2,015,425**	**2,015,425**
Affected Public: Individuals											
Applying Modified Exceptions											
Additional response to verification of hours worked and countable months in another State at initial or recertification application for ABAWDs newly subject to the work requirement	7 CFR 273.2(f)(1), (f)(2), and (f)(8)(i)	517,170.50	1	517,170.50	0.0917	47,407	$22.74	$1,078,041.91	0	47,407	47,407
Additional review of the Consolidated Work Notice for ABAWDs newly subject to the work requirement	7 CFR 273.7(c)(1)	517,170.50	1	517,170.50	0.083	43,098	$22.74	$980,038.10	0	43,098	43,098
Additional review of the oral explanation of the work requirements for ABAWDs newly subject to the work requirement	7 CFR 273.7(c)(1)	517,170.50	1	517,170.50	0.083	43,098	$22.74	$980,038.10	0	43,098	43,098

BILLING CODE 3410–30–C

Activity	Citation	Number of Respondents	Frequency of Response	Total Annual Responses	Hours per Response	Annual Burden (hours)	Hourly Wage Rate	Total Annualized Cost of Respondent Burden	Previously Approved Burden Hours	Change in Burden Hours Due to Program Change	Total Change in Burden Hours
Additional review of the Notice of Adverse Action for ABAWDs newly subject to the work requirement who do not meet it	7 CFR 273.13(a)	282,056	1	282,056	0.067	18,804	$22.74	$427,596.90	0	18,804	18,804
Screening Requirements											
Screening for exemptions from the general work requirement at initial application	7 CFR 273.7(b)(3)	16,549,000	1	16,549,000	0.067	1,103,267	$22.74	$25,088,284.00	0	1,103,267	1,103,267
Screening for exemptions from the general work requirement at recertification application	7 CFR 273.7(b)(3)	2,638,868	1	2,638,868	0.067	175,925	$22.74	$4,000,523.77	0	175,925	175,925
Screening for exceptions from the ABAWD work requirement and time limit at initial application	7 CFR 273.24(k)	5,180,000	1	5,180,000	0.067	345,333	$22.74	$7,852,880.00	0	345,333	345,333
Screening for exceptions from the ABAWD work requirement and time limit at recertification application or during the certification period	7 CFR 273.24(k)	3,577,420	1	3,577,420	0.067	238,495	$22.74	$5,423,368.72	0	238,495	238,495
Reporting Burden Sub-Total for Ongoing Burden to Individuals		**29,778,855.42**	**1**	**29,778,855.42**	**0.068**	**2,015,425.31**	**$22.74**	**$45,830,771.49**	**0**	**2,015,425.31**	**2,015,425.31**
Reporting Burden Total for Ongoing Burden		**29,778,908.42**	**2**	**59,557,745.85**	**0.068**	**4,032,013.61**	**$27.44**	**$110,618,834.97**	**1,163**	**4,030,850.61**	**4,030,850.61**
Reporting Burden Total for All Burden		**29,883,991.42**	**2**	**59,662,934.85**	**0.075**	**4,501,190.61**	**$29.12**	**$131,095,564.36**	**1,163**	**4,504,707.61**	**4,504,707.61**

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Employment, Supplemental Nutrition Assistance Program.

7 CFR Part 273

Administrative practice and procedure, Able-bodied adults without dependents, Employment, Time limit, Work requirements.

Accordingly, the Food and Nutrition Service amends 7 CFR part 271 and 273 as follows:

■ 1. The authority citation for parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. In § 271.1, revise paragraph (a) to read as follows:

§ 271.1 General purpose and scope.

(a) *Purpose of SNAP.* SNAP is designed to promote the general welfare and to safeguard the health and well-being of the Nation's population by raising the levels of nutrition among low-income households. In keeping with section 2 of the Food and Nutrition Act of 2008, the USDA established SNAP under the Act as the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The increased utilization of food in establishing and maintaining adequate national levels of nutrition also promotes the distribution in a beneficial manner of the Nation's agricultural abundance and strengthens the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate hunger and malnutrition, SNAP permits low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation. SNAP includes as a purpose to assist low-income adults in obtaining employment and increasing their earnings. Such employment and earnings, along with program benefits, permits low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

* * * * *

■ 3. In § 271.2, revise the definitions of ''Homeless individual'' and ''Screening'' to read as follows:

§ 271.2 Definitions

* * * * *

Homeless individual means

(1) An individual who lacks a fixed and regular nighttime residence, including, but not limited to, an individual who will imminently lose their nighttime residence; or

(2) An individual whose primary nighttime residence is:

(i) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);

(ii) A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

(iii) A temporary accommodation for not more than 90 days in the residence of another individual; or

(iv) A public or private place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby, or similar places).

* * * * *

Screening means an evaluation by an eligibility worker of an individual for all exemptions from the general work requirements, all exceptions from the able-bodied adults without dependents time limit, and whether the individual should be referred for participation in an employment and training program. Screening for participation in employment and training programs is not considered a part of the E&T program.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 4. In § 273.7, add paragraph (b)(3) to read as follows:

§ 273.7 Work provisions.

* * * * *

(b) * * *

(3) State agencies must screen individuals for all exemptions listed in paragraph (b)(1) of this section at certification and recertification. The State agency must apply the exemption that will be in effect the longest when an individual qualifies for more than one exemption.

* * * * *

■ 5. In § 273.24:

■ a. Amend paragraph (c)(1) by removing the number ''50'' and adding in its place ''55'';

■ b. Amend paragraph (c)(5) by removing ''or'' at the end of the paragraph;

■ c. Amend paragraph (c)(6) by removing the period and adding a semicolon in its place;

■ d. Add paragraphs (c)(7) through (10);

■ e. Amend paragraph (g)(3) by removing the number ''12'' and adding in its place ''8'';

■ f. Amend paragraph (h)(2)(i) by adding a sentence at the end; and

■ g. Add paragraphs (k) and (l).

The additions read as follows:

§ 273.24 Time Limit for able-bodied adults.

* * * * *

(c) * * *

(7) Homeless, as defined in § 271.2 of this chapter;

(8) A veteran, defined as an individual who, regardless of the conditions of their discharge or release from, served in the United States Armed Forces (such as Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, and National Guard), including an individual who served in a reserve component of the Armed Forces, or served as a commissioned officer of the Public Health Service, Environmental Scientific Services Administration, or the National Oceanic and Atmospheric Administration; or

(9) An individual who is 24 years of age or younger and who was in foster care under the responsibility of any State, District, U.S. Territories, Indian Tribal Organization, or Unaccompanied Refugee Minors Program on the date of attaining 18 years of age, including those who remain in extended foster care in States that have elected to extend foster care in accordance with section 475(8)(B)(iii) of the Social Security Act (42 U.S.C. 675(8)(B)(iii)) or those who leave extended foster care before the maximum age.

(10) Unless otherwise changed by law, the exceptions provided at paragraphs (c)(7) through (9) of this section cease to have effect on October 1, 2030, and the age limit provided in paragraph (c)(1) of this section reverts from ''55 years of age or older'' to ''50 years of age or older'' on October 1, 2030.

* * * * *

(h) * * *

(2) * * *

(i) * * * Starting in FY 2026, FNS will increase the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the remaining balance of unused exemptions earned for the previous

fiscal year. FNS will consider the State agency to use exemptions in order of accrual (first-in, first-out) for the purposes of calculating carryover of unused exemptions.

* * * * *

(k) *Screening.* The State agency must screen individuals for all exceptions from the time limit listed under paragraph (c) of this section at certification and recertification. The State agency must not assign countable months unless it has screened the individual and determined that no exception applies. When an individual qualifies for more than one exception, the State agency must apply the exception that will be in effect the longest.

(1) Changes in exception status during the certification period.

(i) *Loss of an exception.* If during the certification period an individual has a change in circumstances that results in the loss of an exception from the time limit, the State agency cannot begin assigning countable months until it screens the individual to determine whether any other exception applies.

(ii) *Newly meeting an exception.* If during the certification period an individual subject to the time limit has a change in circumstance that results in the individual now meeting an exception, the State agency must act promptly to apply the exception and cannot assign a countable month once the State receives information that is not questionable. If the State agency determines the information is questionable, the State agency must act promptly to verify the information in accordance with paragraph (l) of this section. Once verified, the State agency must apply the exception and cannot assign countable months.

(l) *Verification of exceptions.* If the State agency determines an individual's exception status under paragraph (c) of this section is questionable, the State agency must first attempt to verify exception status using information available to the State agency, such as information from other public assistance programs through data sharing, before requiring individuals provide documentary evidence or other sources of verification.

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

I. Statement of Need

This rulemaking is necessary to amend Supplemental Nutrition Assistance Program (SNAP) regulations to reflect mandates within the Fiscal Responsibility Act (FRA) of 2023 (Public Law 118–5) establishing changes to SNAP's work requirements and time limit for several groupings of adults. The FRA also directs the U.S. Department of Agriculture (the Department) to add to the program purpose language in the Food and Nutrition Act of 2008 (the Act), as amended. The final rule amends SNAP regulations to incorporate several provisions of the FRA: adjust SNAP's able-bodied adults without dependents (ABAWDs) work requirement and time limit [17] on a phased-in approach to newly included individuals who are aged 50–54; establish new exceptions for individuals who are veterans, homeless, and youth aged 24 or younger who have aged out of a foster care program from the time limit; decrease State agencies' annual allotment of discretionary exemptions for individuals subject to the time limit from 12 percent to 8 percent; and limit State agencies' ability to carryover unused discretionary exemptions beyond one year. The provisions outlined above will be phased in between the enactment of the legislation in June 2023, through October 2025, with several provisions sunsetting October 1, 2030. The final rule also codifies regulations requiring State agencies to screen individuals for exceptions to the time limit, as well as exemptions from the general work requirement, as State agencies must screen for both to adequately determine if an individual should be subject to the time limit. The Department is amending the regulations to clarify screening requirements to improve consistency in program operations across States and provide quality customer service, as well as to require State agencies to apply the longest-lasting exception to a client's case. The provisions of the final rule are compared to a ''without-statute baseline,'' as well as a ''with-statute baseline,'' in this regulatory impact analysis (RIA) to fully assess impacts of the rule. Unless otherwise noted, estimates in this RIA use a without-statute baseline for comparison, meaning they reflect the full costs and savings of the provisions required by the FRA and non-statutory amendment clarifying screening for the longest exception.

II. Summary of Impacts

When compared to a without-statute baseline, the Department estimates the net total increase in federal transfers (SNAP benefit spending) associated with the provisions of this final rule to be approximately $3.5 billion over the nine years Fiscal Year (FY) 2023–FY 2031, averaging $393.1 million per year. Over the nine-year period FY 2023–FY 2031,[18] this is the net result of a reduction in transfers of $5.1 billion by terminating benefits to about 1.8 million individuals, a reduction to the benefits of 123,000 individuals of $149.1 million, and an increase in transfers of $8.7 billion due to about 2.6 million individuals meeting exceptions from the time limit. Over the nine-year period, federal administrative costs (not including transfers) are estimated to total $283.9 million, or an annual average of $31.5 million. Total State agency administrative expenses are also estimated to be approximately $283.9 million over the nine-year period, or an annual average of $31.5 million. Costs associated with administrative burden to individual SNAP participants are estimated to be approximately $358.3 million over the nine-year period, or an annual average of $39.8 million.

When compared to a with-statute baseline,[19] the Department estimates the net total cost of the final rule to be $58.1 million over the nine-year period FY 2023–FY 2031, averaging $6.5 million per year. The total cost includes approximately $29 million in State agency administrative expenses and approximately $29.1 million in total federal administrative costs. There are no estimated impacts to benefit transfers or to participant burden when using a with-statute baseline.

The final rule will primarily affect SNAP participants who are subject to the ABAWD time limit, which the Department estimates to be approximately 9.2 percent of SNAP participants upon full implementation of the FRA's provisions in FY 2026. However, many of these participants will meet the time limit or receive an exception, so far fewer will lose eligibility for SNAP.

The estimated net impact of the final rule's change in the age-based exceptions and three new exceptions is a net increase in SNAP participation of about 89,000 to 95,000 individuals per year when fully implemented. In FY 2026, this includes 301,000 participants losing eligibility, 367,000 participants retaining eligibility through one of the new exceptions, and about 29,000 new participants. See Table 8 for year-by-year details on additional participation and transfer impacts. Beyond the direct, quantifiable impacts to individuals that are estimated in this RIA, these provisions are also expected to cause secondary impacts to individuals and society around them; these effects are discussed in more detail in Section VI, Qualitative Assessment.

The final rule is estimated to increase administrative burden for most State SNAP

[17] For the purposes of the final rule, the Department will use the term ''time limit'' to refer to both the ABAWD work requirement and time limit, as this phrasing more accurately describes the requirements applied to time-limited participants.

[18] A nine-year analysis period is used to align with the implementation and sunset periods established by the FRA. See discussion of baseline and time horizon of analysis for more detail.

[19] Comparison to a with-statute baseline permits the Department to isolate the cost and savings from the discretionary amendment to SNAP regulations in the final rule, by assuming the effects of the FRA's statutory requirements are fully incorporated into the baseline. The Office of Management and Budget's (OMB) Circular No. A–4 specifies that analysis using multiple baselines may be appropriate to enhance transparency. This RIA uses with-statute and without-statute baselines. Circular No. A–4 can be viewed here: *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf*

agencies at initial implementation, throughout the period the provisions are in effect, and at the sunset of the provisions that expire on October 1, 2030. Against a without-statute baseline, the rule is estimated to result in a one-time administrative burden of 469,177 total hours (about $10.3 million during FYs 2023 and 2024 after 50 percent federal cost reimbursement) [20] in start-up costs for State agencies. Ongoing State agency administrative burden is expected to increase by about 1.6 million hours annually, nationwide (a cost to State agencies of about $28.8 million annually after 50 percent federal cost reimbursement). The one-time total State agency administrative burden of sunsetting the applicable provisions within this final rule is estimated to be 575,583 total hours (about $14.3 million in FYs 2030 and 2031 after 50 percent federal cost reimbursement). The final rule imposes additional administrative burden on participants who are subject to the time limit, estimated to be an ongoing average annual burden of 1.6 million hours for all individuals impacted at a cost of $39.5 million annually. Additionally, the final rule imposes a one-time burden of 106,406 hours on affected SNAP participants during the sunsetting of applicable provisions in FY 2031 at a cost of $2.8 million. In addition to the federal share of State agencies' administrative expenses, the rule is estimated to result in a one-time administrative burden of 90 hours at implementation (or $6,902 in FY 2024) and a one-time administrative burden of 63 hours at sunset (or $5,949 in FY 2030) to the Federal Government.

Compared to a with-statute baseline, there are no estimated implementation or sunsetting costs for State agencies. The ongoing administrative burden to State agencies is approximately 177,142 hours annually on average (about $3.2 million annually after 50 percent federal cost reimbursement). In addition to the federal share of State agencies' administrative expenses, the rule is estimated to result in a one-time administrative burden of 1.25 hours at implementation (or $97 in FY 2024) and a one-time administrative burden of 2.25 hours at sunset (or $187 in FY 2030) to the Federal Government. There is no estimated impact to participant burden when using a with-statute baseline.

See Tables 1a and 1b for a year-by-year presentation of changes to transfers, federal administrative costs, State agency administrative costs, and burden costs to individual participants. Table 1a uses a without-statute baseline for comparison, while Table 1b uses a with-statute baseline.

BILLING CODE 3410–30–P

[20] Fifty percent of State agencies' allowable SNAP administrative costs are reimbursed by the Federal Government, as defined at 7 CFR 277.4(b).

Table 1a: Summary of Federal Budget Impacts, FY 2023-2031, in comparison to a without-statute baseline

In Millions of Dollars (rounded to nearest thousand)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031	FY 2023 - FY 2031 Total
Transfers - SNAP benefit spending ($millions)										
Raising the ABAWD age limit from 50 to 55	*	-$237.13	-$684.80	-$855.38	-$855.78	-$856.53	-$857.80	-$861.60	$0.00	**-$5,209.01**
New exceptions for homeless, veteran, and former foster youth	*	$503.64	$1,277.35	$1,275.49	$1,277.39	$1,279.83	$1,283.04	$1,289.88	$560.54	**$8,747.16**
Total Estimated Transfers* **	*	**$266.51**	**$592.55**	**$420.12**	**$421.61**	**$423.30**	**$425.24**	**$428.28**	**$560.54**	**$3,538.15**
Discounted Transfer Impact										
2 percent	*	$256.17	$558.37	$388.12	$381.87	$375.88	$370.20	$365.53	$469.03	**$3,165.17**
*Federal and State Administrative Costs** ($millions)*										
State Administrative Costs – Implementation	$8.52	$1.77	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**$10.29**
State Administrative Costs – Ongoing	$0.18	$10.33	$33.83	$35.10	$35.91	$36.73	$37.58	$38.44	$31.26	**$259.37**
State Administrative Costs – Sunsetting	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$10.11	$4.16	**$14.27**
Federal Costs – Implementation	$0.00	$0.01	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**$0.01**
Federal Costs – Federal Share of State Administrative Expenses	$8.70	$12.10	$33.83	$35.10	$35.91	$36.73	$37.58	$48.55	$35.42	**$283.93**
Federal Costs – Sunsetting	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.01	$0.00	**$0.01**
Total Federal and State Costs* **	**$17.41**	**$24.21**	**$67.67**	**$70.20**	**$71.82**	**$73.47**	**$75.16**	**$97.11**	**$70.84**	**$567.88**
Household Burden Costs ($millions)										
Total Household Burden Costs* **	**$0.26**	**$14.16**	**$46.37**	**$48.11**	**$49.22**	**$50.35**	**$51.50**	**$52.69**	**$45.69**	**$358.34**
Total Estimated Costs (*Federal, State, and Household Costs*)* **	**$17.66**	**$38.37**	**$114.04**	**$118.31**	**$121.03**	**$123.81**	**$126.66**	**$149.80**	**$116.54**	**$926.22**
Discounted Cost Impact										
2 percent	$17.32	$36.88	$107.46	$109.30	$109.30	$109.94	$110.26	$127.85	$97.51	**$826.15**

* Nominal transfer impacts are estimated in FY 2023 for provisions of the FRA that went into effect September 1, 2023.

** Federal and State Administrative Costs are estimated post-50 percent federal reimbursement.

*** Totals may not add due to rounding.

Table 1b: Summary of Federal Budget Impacts, FY 2023-2031, in comparison to a with-statute baseline

In Millions of Dollars (rounded to nearest thousand)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031	FY 2023 - FY 2031 Total
*Transfers - SNAP benefit spending ($millions)**										
Raising the ABAWD age limit from 50 to 55	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**$0.00**
New exceptions for homeless, veteran, and former foster youth	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**$0.00**
Total Estimated Transfers	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
Discounted Transfer Impact										
2 percent	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**$0.00**
*Federal and State Administrative Costs** ($millions)*										
State Administrative Costs – Implementation	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**$0.00**
State Administrative Costs – Ongoing	$0.00	$0.00	$3.91	$4.06	$4.15	$4.24	$4.34	$4.44	$3.91	**$29.05**
State Administrative Costs – Sunsetting	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**$0.00**
Federal Costs – Implementation	$0.00	< $0.01	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	**< $0.01**
Federal Costs – Federal Share of State Administrative Expenses	$0.00	$0.00	$3.91	$4.06	$4.15	$4.24	$4.34	$4.44	$3.91	**$29.05**
Federal Costs – Sunsetting	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	< $0.01	$0.00	**< $0.01**
Total Federal and State Costs***	**$0.00**	**< $0.01**	**$7.82**	**$8.11**	**$8.30**	**$8.49**	**$8.68**	**$8.88**	**$7.82**	**$58.10**
Household Burden Costs ($millions)										
Total Household Burden Costs*	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**
Total Estimated Costs (*Federal, State, and Household Costs*)***	**$0.00**	**< $0.01**	**$7.82**	**$8.11**	**$8.30**	**$8.49**	**$8.68**	**$8.88**	**$7.82**	**$58.10**
Discounted Cost Impact										
2 percent	$0.00	< $0.01	$7.37	$7.49	$7.52	$7.54	$7.56	$7.58	$6.54	**$51.60**

* There are no estimated Transfer Impacts or Household Burden impacts using a with-statute baseline.

** Federal and State Administrative Costs are estimated post-50 percent federal reimbursement.

*** Totals may not add due to rounding.

As required by OMB's Circular A–4, in Table 2 below, the Department has prepared an accounting statement showing the annualized estimates of benefits, costs, and transfers associated with the provisions of this rule. Due to the primary focus on transfer effects in this near-term analysis, the Department has used a discount rate of 2 percent. Increases in SNAP benefit payments are categorized as transfers; increases in administrative burden for State agencies, households, and the Federal Government are categorized as costs.

Table 2: Accounting Statement, in comparison to without- and with-statute baselines

	Primary Estimate	Year Dollar	Discount Rate	Period Covered
Benefits – Qualitative: The new exceptions from the ABAWD time limit for veterans, individuals experiencing homelessness, and some individuals formerly in foster care will allow these vulnerable populations to retain SNAP eligibility and benefits. In turn, these individuals may not experience an increase in food insecurity or poverty which could have broader societal impacts such as reduced health care costs or reduced reliance on emergency food assistance providers, like food pantries (see Section VI for additional information and citations). Additionally, the final rule will require State agencies to consistently screen for exceptions and exemptions, improving customer service for individuals subject to the time limit.				
Annualized Monetized ($millions/year), without-statute	N/A	2023	2%	FY 2023-2031
Annualized Monetized ($millions/year), with-statute	N/A	2023	2%	FY 2023-2031
Costs – Administrative: This final rule will result in one-time burdens for State agencies and the Federal Government at implementation and at sunset of the provisions within this rule. There will also be ongoing costs to State agencies, the Federal Government, and households throughout the duration of the rule's provisions. Qualitative: Increasing the age of individuals subject to the time limit will negatively impact those individuals who will become ineligible for SNAP and lose SNAP benefits. In turn, these individuals may experience increases in food insecurity and poverty which could have broader societal impacts such as increased health care costs or increased reliance on emergency food assistance providers, like food pantries (see Section VI for additional information and citations).				
Annualized Monetized ($millions/year), without-statute	$101.22	2023	2%	FY 2023-2031
Annualized Monetized ($millions/year), with-statute	$0.01	2023	2%	FY 2023-2031
Transfers – This final rule will increase the net amount of benefit payments to SNAP participants.				
Annualized Monetized ($millions/year), without-statute	$387.80	2023	2%	FY 2023-2031
Annualized Monetized ($millions/year), with-statute	N/A	2023	2%	FY 2023-2031

BILLING CODE 3410–30–C

In the discussion that follows, there is a section-by-section description of the effects of the final rule on SNAP participants, the

Federal Government, and State agencies administering SNAP.

III. Proposed Rule and Comments Received

The proposed version of this final rule, Supplemental Nutrition Assistance Program: Program Purpose and Work Requirement Provisions of the Fiscal Responsibility Act of 2023, was published in the **Federal Register** (2024–08338) on April 29, 2024, with an initial comment period of 30 days through May 30, 2024. The comment period was subsequently extended by 15 days and closed on June 14, 2024. There were 41 comments received.[21]

Of the public comments submitted that related to the RIA, three themes in the feedback were identified. Details, as well as USDA's response, are as follows:

A. Baseline Used for Aanalysis

The proposed rule used the Mid-Session Review (MSR) of the FY 2024 President's Budget baseline estimates for SNAP benefits and participation to produce estimates of changes in participation and benefit spending (in nominal dollars) against a without-statute baseline; this was the most recent baseline available at the time the RIA was prepared. The use of the MSR FY 2024 President's Budget baseline was critiqued by a policy organization as being outdated.

As noted, the Department used the most recent SNAP benefits and participation estimates available at the time the proposed rule's RIA was prepared. The RIA for the final rule has been updated to use SNAP benefits and participation estimates for the MSR of the FY 2025 President's Budget baseline, which was the most recent baseline available when the final rule's RIA was prepared.

The commenter also noted that the MSR FY 2024 President's Budget SNAP baseline differs from the Congressional Budget Office's (CBO) baseline used in CBO analyses of the FRA and requested this final rule RIA be performed with a multi-baseline analysis. We acknowledge that CBO's baseline differs from the President's Budget and MSR baselines, which reflect the level of SNAP participation and benefits spending anticipated under current law, using the Budget's economic and technical assumptions. FNS uses historical program data as well as the Administration's economic assumptions for economic indicators, such as unemployment rates, to produce projections of SNAP participation and benefits over a 10-year budget window. FNS is unable to reproduce CBO's independent, economic and technical baseline assumptions. Because the MSR of the FY2025 President's Budget represents USDA's most recent projections for SNAP participation and benefits, and it is adaptable to a with-statue and without-statute comparison,[22] it was selected as the most appropriate participation and benefits baseline for this final rule RIA.

As noted previously, the Department has also added a secondary comparison to a with-statute baseline to this RIA. Distinctions between the two analyses will be noted when appropriate.

B. Considering Secondary Impacts

A policy organization and a member of the public commented that they believed the proposed rule's RIA did not adequately consider the secondary impacts of the provisions of the rule, such as what the policy organization noted to be the ''significant benefits of work and the negative effects of dependency and reduced incentives for employment associated with weakening work requirements,'' and what the public commenter called the secondary impacts of losing SNAP eligibility, including ''effects of the policy on food security, poverty, and health care costs.''

In regard to the policy organization's comment citing the ''significant benefits of work,'' USDA does not dispute the general benefits of employment noted by the commenter, including potential benefits for a person's economic, physical, and mental well-being;[23] however, as noted by a 2021 USDA study cited by the commenter, a reduction in SNAP participation cannot be equated to a meaningful increase in employment or earnings among individuals subject to the ABAWD time limit.[24] This study additionally finds that the time limit has a small, statistically significant negative impact on employment outcomes.

An additional source cited by this commenter similarly noted that individuals lose SNAP eligibility due to the time limit without necessarily experiencing improved employment outcomes, finding that ''work requirements increase [SNAP] program exits by 23 percentage points (64 percent) among incumbent participants after 18 months,'' though the study finds no effects on employment.[25] In other words, while the authors found clear evidence that the time limit leads participants to leave the program, they did not find significant evidence that those participants experience improved employment and earnings outcomes, nor the benefits that employment and earnings could confer. A third study cited by the policy organization finds there to be a ''marginal'' increase to employment as a result of work requirements, but a ''significant'' decrease to SNAP participation.[26] Research indicates that the SNAP time limit does result in participants leaving the program but does not indicate meaningful increases in employment among those who lose eligibility due to the time limit. Therefore, we do not expect the final rule's provision subjecting additional participants to the time limit to result in benefits associated with increased employment.

The member of the public noted that research indicates SNAP participation impacts food security, poverty, and health care costs. Although the Department is unable to use this research to produce specific cost or saving estimates associated with the final rule, we agree that secondary effects related to food security, poverty, and health care costs are likely to occur among the SNAP participants affected by the final rule. In response to this comment, USDA has expanded on the qualitative analysis of the rule in a new section discussing the research on secondary impacts of SNAP participation, Section VI. Qualitative Assessment.

C. Estimates Relating to Definition of ''Homeless Individual''

Two commenters expressed concerns regarding the proposed rule's definition of ''homeless individual'' and the data used to estimate the number of homeless individuals impacted by the proposed rule in the RIA.

An individual commenter cited concern that the use of ''imminently homeless'' within the definition of ''homeless individual'' is too broad to enable an accurate estimate of the number of individuals who will be impacted. They also noted a discrepancy between the definition of ''homeless individual'' between the RIA and the proposed rule. USDA has confirmed consistency of the definition throughout the final rule and RIA and maintains that the methodology used in the proposed rule RIA is appropriate.

Because State SNAP agencies already screen SNAP participants for homelessness, we believe SNAP Quality Control (QC) data[27] are the most accurate source of information about the scale of homelessness among SNAP participants who are subject to the time limit. Our estimates in the proposed rule RIA were directly based on the share of SNAP participants experiencing homelessness and did not incorporate any expansions in the relative size of this group. The existing definition of ''homeless individual'' for SNAP purposes defines individuals as homeless if they ''lack a fixed and regular nighttime residence,'' which encompasses a diverse set of circumstances that can constitute homelessness. The proposed and final rule clarify that individuals who will be ''imminently homeless'' may already be considered homeless under SNAP's existing definition because they lack a fixed and regular nighttime residence. This clarification is not

[21] Posted public comments may be found at regulations.gov (*https://www.regulations.gov/document/FNS-2023-0058-0001/comment* and *https://www.regulations.gov/document/FNS-2023-0058-0003/comment*).

[22] Adaptation of the MSR of the FY 2025 President's Budget for without-statute analysis is discussed further in Section IV. F. Methodology.

[23] Gordon Wadell and A. Kim Burton, ''Is work good for your health and well-being? An independent review,'' U.K. Department for Work and Pensions, January 1, 2006, *https://www.gov.uk/government/publications/is-work-good-for-your-health-and-well-being*.

[24] Wheaton, Laura et al. (2021) *The Impact of SNAP Able-Bodied Adults Without Dependents (ABAWD) Time Limit Reinstatement in Nine States.* Prepared by the Urban Institute for the USDA Food and Nutrition Service, 2021. Available at: *https://www.fns.usda.gov/snap/impact-snap-able-bodied-adults-without-dependents-abawd-time-limit-reinstatement-nine.*

[25] Colin Gray, Adam Leive, Elena Prager, Kelsey B. Pukelis & Mary Zaki, ''Employed in a SNAP? The Impact of Work Requirements on Program Participation and Labor Supply,'' National Bureau of Economic Research, Working Paper 28877, June 2021, *https://www.nber.org/papers/w28877.*

[26] Timothy F. Harris, ''Do SNAP Work Requirements Work?,'' W.E. Upjohn Institute for Employment Research, December 13, 2018, *https://research.upjohn.org/up_workingpapers/297/.*

[27] SNAP QC data are further discussed in Section IV. F. Methodology.

expected to substantively change the way State SNAP agencies define a ''homeless individual,'' and therefore the current share of SNAP participants experiencing homelessness is an appropriate indication of who may benefit from the proposed and final rule's exception for individuals experiencing homelessness. We also provide additional clarification in the methodology section.

A policy organization noted a concern that USDA's use of SNAP QC data in the proposed rule's RIA to estimate the number of individuals participating in SNAP who are experiencing homelessness is an incorrectly high estimate, citing a lower estimate of individuals in the United States experiencing homelessness as measured by the United States Department of Housing and Urban Development's (HUD) Point-in-Time Count, which estimates that 653,104 individuals were experiencing homelessness in the United States at a specific time in January 2023.[28] HUD's Point-in-Time Count methodology provides processes for counting individuals experiencing homelessness, both in sheltered (an emergency shelter, Safe Haven, or transitional housing project) and unsheltered (defined as ''. . . a primary nighttime residence that is a public or private place not designed for or ordinarily used as a sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground'') situations.[29] The volunteers completing the assessment aim to capture this count on one night during the last ten days in January, with each collecting entity (known as a ''Continuum of Care,'' or CoC) having the discretion to complete the assessment on the night-of, within the 7 days following the night, or a combination thereof. Each CoC also has the discretion to determine whether the count will be completed using a census method or a sampling method and whether to complete a 'complete coverage count' or a count within 'known locations' where people who are unsheltered could be located at night.

There are several reasons the HUD Point-in-Time count underestimates the true count of individuals experiencing homelessness over the course of a year.[30] For example, individuals experiencing homelessness would be uncounted through this method if they stay temporarily in a motel or with friends or relatives on the night the count is conducted in their area. Additionally, they may not be identified as a homeless individual while sleeping in a car, may not be identified as a homeless individual while at a campground, could be uncounted if they move locations throughout the duration of the Point-in-Time count, could be in a location that is under-sampled or thought to be a location where no homeless individuals reside, could be incarcerated at the time of the Point-in-Time count, or could strategically choose to sleep in more hidden locations for safety or to avoid law enforcement. The design of the Point-in-Time count does not account for fluctuations in the number of individuals experiencing homelessness throughout the year, nor the fact that individuals move in and out of homelessness throughout a year. Potential inconsistencies in variables like volunteer number and training, weather during the count, and the parameters chosen for the count by each CoC could also introduce inaccuracies in the Point-in-Time count.

Other government entities use different methods to count individuals experiencing homelessness. For example, the United States Department of Education regularly produces an estimate of students experiencing homelessness that is also considerably higher than HUD's Point-in-Time Count. The Department of Education estimates 1,205,529 children or youth experiencing homelessness enrolled in public school during the 2021–2022 school year,[31] which is more than double HUD's estimate of 582,462 people of all ages experiencing homelessness during the January 2022 Point-in-Time estimate [32] from the same time period as the 2021–2022 school year. The number of enrolled students experiencing homelessness is reported directly by schools to the Department of Education.

Given the limitations to this specific HUD data set, the Department believes SNAP QC data provide the best-available estimate of how many SNAP participants experience homelessness, since State SNAP agencies are required to screen for homelessness at SNAP application and recertification. Therefore, we maintain that SNAP QC data provide a more accurate estimate of homelessness among SNAP participants than any other agency's data on homelessness.

IV. Background

A. Work Requirements in SNAP

The Food and Nutrition Act of 2008 (the Act), as amended, establishes national eligibility standards for SNAP, including work requirements for certain individuals. The first of these requirements, referred to as the general work requirement, requires certain individuals between the ages of 16–59 who are able to work to register for work; accept an offer of suitable employment; not voluntarily quit or reduce hours of employment below 30-hours per week, without good cause; and participate in workfare or SNAP Employment and Training (E&T) [33] if required by the State agency. Most SNAP participants are exempt from the general work requirement because they are older adults, children, have a disability, or meet another exemption from the general work requirement listed in the Act.

A subset of individuals who are subject to the general work requirement are also subject to an additional requirement, referred to as the ABAWD work requirement or the time limit. Prior to the FRA, individuals subject to the time limit were individuals ages 18 to 49 who do not have a child (under age 18) in their SNAP household and are not considered disabled by SNAP rules.[34] The Act limits individuals who are subject to the time limit, also referred to as time-limited participants, to receiving SNAP benefits for 3 months in a 36-month period (the time limit) unless they are meeting the additional work requirement, live in an area where the time limit is waived due to a lack of sufficient jobs or a high unemployment rate, or are otherwise exempt. If an individual subject to the time limit receives SNAP benefits in a month when they did not meet the work requirement or otherwise were waived or excepted from the time limit as noted above, that month is considered a ''countable'' month and counts as 1 of the 3 months within the 36-month period where the individual may still retain SNAP eligibility. The Act provides exceptions from the time limit based on certain individual circumstances, such as physical or mental limitations that limit ability to work, a certain student status, need to care for a dependent household member, pregnancy, or meeting an exemption from the general work requirement. Individuals can continue receiving SNAP beyond the three-month time limit by working, participating in a qualifying work program (including SNAP E&T), or any combination of the two, for at least 20 hours per week (averaged monthly to 80 hours per month). Individuals can also meet the time limit by participating in and complying with workfare for the number of hours assigned (equal to the result obtained by dividing a household's SNAP allotment by the higher of the applicable Federal or State minimum wage). For the purposes of the time

[28] The United States Department of Housing and Urban Development, ''Fact Sheet: 2023 Annual Homelessness Assessment Report Key Findings from the Point-in-Time Counts'', *https://www.hud.gov/sites/dfiles/PA/documents/HUD_No_23_278_4.pdf.*

[29] United Stated Department of Housing and Urban Development, ''Point-in-Time Count Methodology Guide,'' March 2015, *https://files.hudexchange.info/resources/documents/PIT-Count-Methodology-Guide.pdf.*

[30] National Law Center on Homelessness, ''Don't Count On It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America,'' *https://homelesslaw.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf.*

[31] U.S. Department of Education, ED Data Express file specification 118, SEA Level (2021–2022); *https://eddataexpress.ed.gov/download/data-library?field_year_target_id=2919&field_population_value=Homeless+Students&field_data_topic_target_id=All&field_reporting_level_target_id=26&field_program_target_id=All&field_file_spec_target_id=1005&field_data_group_id_target_id=All&combine=.*

[32] The United States Department of Housing and Urban Development, *https://www.hud.gov/sites/dfiles/PA/documents/HUD_No_23_278_4.pdf.*

[33] The SNAP Employment and Training (E&T) program helps SNAP participants gain skills and find work that moves them forward to self-sufficiency. Depending on whether a State agency operates a mandatory E&T program, individuals in some States may be required to participate in the State's E&T program as a condition of meeting work requirements. Federal funding for SNAP E&T was $599 million in FY 2024.

[34] In SNAP, an individual is considered disabled if they receive federal disability or blindness payments under the Social Security Act, including Supplemental Security Income (SSI), receive state disability or blindness payments based on SSI rules, receive disability retirement benefits from a governmental agency because of a permanent disability, receive an annuity under the Railroad Retirement Act and are eligible for Medicare or are considered disabled under SSI; are a veteran who is totally disabled, permanently homebound, or in need of regular aid and attendance; or are the surviving spouse or child of a veteran who is receiving VA benefits and is considered permanently disabled.

limit, working includes unpaid or volunteer work that is verified by the State agency.

B. Characteristics of Individuals Subject to the ABAWD Time Limit

The Department estimates that in FY 2024, approximately 9.1 percent of SNAP participants are ages 18 to 49 and subject to the time limit, and 78 percent of them are in one-person SNAP households.[35] These time-limited participants have very low household gross income, averaging only 41 percent of the federal poverty level (FPL). For comparison, the average SNAP household has a gross income of about 69 percent of the FPL. About 18 percent of time-limited participants are experiencing homelessness at the time of SNAP certification or recertification.[36] Research indicates that time-limited participants who are not meeting the time limit can face significant barriers to finding or increasing their employment and earnings. A 2021 USDA study in 9 States found that 5 to 12 percent of SNAP participants subject to the time limit were meeting the time limit when those States reinstated the time limit after the Great Recession.[37] Participants who were homeless were much less likely to meet the time limit. The study also found the reinstatement of the time limit substantially reduced SNAP participation among individuals subject to the time limit, with no evidence of increased employment or earnings.

C. Factors That Permit Time-Limited Individuals To Continue Participating in SNAP Beyond Three Months

As previously discussed, some individuals who are subject to the time limit may meet an exception from the time limit. The Act also allows for waivers of the time limit in geographic areas with an unemployment rate over 10 percent or an insufficient number of jobs to provide employment for individuals, as defined at 7 CFR 273.24(f). Individuals residing in areas with a waiver of the time limit may continue receiving benefits even if they are not meeting the additional time-limit work requirement for more than 3 months in a 36-month period. Lastly, the Act establishes an annual allotment of discretionary exemptions that State agencies may use to extend eligibility for a time-limited participant who is not meeting the time limit. Each discretionary exemption can extend eligibility for one participant for one month and a single participant can receive multiple one-month discretionary exemptions. As defined by law, each State agency's allotment of discretionary exemptions is calculated annually by the Department, based on the total number of time-limited participants in the State who have exceeded three countable months due to the time limit in the preceding fiscal year, known as ''covered'' individuals. Prior to the FRA, State agencies' annual allotments of discretionary exemptions were based on 12 percent of the total number of covered individuals in the State. If a State agency did not use the exemptions, they could be carried over indefinitely.

D. FRA Legislative Updates

The FRA [38] amended the Act, revising the definition of who is subject to the time limit, exceptions from the time limit, procedures for the calculation and carryover of discretionary exemptions, as well as the program purpose. Based on these changes, the Department is amending the regulations to reflect the requirements of the FRA.

The FRA also required the Department to publicize all available State requests for waivers authorized by Sec. 6(o)(4)(A), including supporting data, and all Department approvals of waivers within 30 days of enactment. The Department complied with this requirement and is not conducting rulemaking related to this provision.

E. Baselines and Time Horizon of Analysis

Our baseline for measuring the costs, benefits, and transfers associated with this final rule is the Department's SNAP participation and benefit estimates for FYs 2023—2031, from the MSR of the FY 2025 President's Budget. These participation and benefits estimates are adjusted to exclude the effects of FRA provisions, shown in Table 3 below to facilitate a without-statute comparison. This baseline represents the Department's best estimate of SNAP participation and benefits spending (in nominal dollars) in the absence of the provisions included in this final rule.[39] This will be referred to as the without-statute baseline throughout the RIA and most estimates in this RIA are the result of evaluating the final rule against the without-statute baseline. To clarify which costs or benefits in the final rule are attributable to non-statutory elements of the final rule (*i.e.,* provisions not required to implement statute), we have also included estimates that use a with-statute baseline.

All costs related to administrative burden for State agencies, the Federal Government and households are measured against currently approved burden estimates in OMB Control No. 0584–0479.

This RIA uses FY 2023–FY 2031 as the timeframe for analysis because this range fully incorporates the implementation and sunsetting periods of FRA provisions. A 9-year analysis period (rather than a more typical 5-year or 10-year period) is used to align with the implementation period established by the FRA, which began in September 2023. While some of the provisions included in the FRA and in the final rule are ongoing, others are expected to sunset at the start of FY 2031. As a portion of SNAP participants will not be affected by the sunset immediately upon the start of FY 2031, but rather at their screening that will take place during FY 2031, the Department expects there will be some continuing transfer impacts in FY 2031, as well as administrative costs associated with the sunsetting of certain provisions in FYs 2030 and 2031. Thus, the Department determined that the period FY 2023–FY 2031 is the appropriate period to assess the rule's economic effects.

Table 3: Estimated SNAP Participation and Benefit Baseline[40]

	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Participation (000s)	42,067	41,439	41,497	40,029	39,154	38,305	37,502	36,822	36,071
Benefits (nominal $millions)	90,149	95,622	97,306	97,274	98,380	99,455	100,512	101,885	102,932

[35] *Note:* The Department estimates that individuals subject to the ABAWD time limit in FY 2024 are a comparable share of the caseload to the most recent SNAP QC data available (from FY 2022), which were gathered during an extended suspension of the ABAWD time limit during the COVID–19 Public Health Emergency by the Families First Coronavirus Response Act (FFCRA). Because States were still unwinding the COVID–19 waivers at the start of FY 2024, the Department estimates these individuals would make up a similar share of the caseload at both points in time.

[36] Based on tabulation of FY 2022 SNAP QC data.

[37] Wheaton, Laura et al. (2021) *The Impact of SNAP Able-Bodied Adults Without Dependents (ABAWD) Time Limit Reinstatement in Nine States.* Prepared by the Urban Institute for the USDA Food and Nutrition Service, 2021. Available at: *https://www.fns.usda.gov/snap/impact-snap-able-bodied-adults-without-dependents-abawd-time-limit-reinstatement-nine*

[38] Full text of the law can be found at: *https://www.congress.gov/bill/118th-congress/house-bill/3746/text.*

[39] Although the Department has adjusted SNAP estimates for the MSR of the FY2025 President's Budget to include the effects of the FRA, the baseline used for this analysis excludes those FRA-related adjustments.

[40] Each year as part of the process of developing the President's Budget, the Department produces estimates of expected SNAP participation and benefit spending over a ten-year period. Estimates in this Regulatory Impact Analysis are based on Department Estimates for the Mid-Session Review of the FY 2025 President's Budget, excluding FRA-related adjustments to the baseline estimates; benefit values for FY 2023 reflect benefit amounts (excluding emergency allotments authorized during the COVID–19 Public Health Emergency, which expired in March 2023).

F. Methodology

Multiple data sources were used to estimate how the provisions in the final rule will affect SNAP participants, State agencies, and the Federal Government. Methodology and estimates are discussed in this section, according to the data source used. To estimate the effects of the final rule's provisions, the proportion of SNAP participants likely to be affected by each provision was derived from the following data sources. Those ratios were then applied to the appropriate baseline estimates for SNAP spending and participation to produce estimates of changes in participation and benefit spending (in nominal dollars) for future years. All data sources were the most recent versions available at the time this analysis was prepared.

SNAP Quality Control Data

The estimates provided in this RIA are primarily based on SNAP Quality Control (QC) data from FY 2022, and the baseline included in Table 3. At the time of analysis, this is the most recent period for which the Department has a weighted QC dataset for analytic purposes that includes all 53 State agencies. SNAP QC data are collected annually as part of the ongoing effort to determine the accuracy of SNAP certification actions.[41] Data are collected for a sample of SNAP households that is statistically representative at both the national and state levels. The FY 2022 QC dataset includes data from 41,391 households, including information on household earnings, household composition, and participant characteristics that permit inference of ABAWD status (*e.g.,* age, disability status, presence of children in the SNAP household, and whether the individual is exempt from the SNAP general work requirement). The data also include information that can be used to infer employment status (*e.g.,* amount of monthly earned income). The sample of households included in the FY 2022 dataset are weighted to be representative of the SNAP caseload during that fiscal year nationally and in each State.

Estimates derived from the QC data include:

50–54-Year-Olds Newly Subject to the Time Limit

- Share of SNAP participants that are likely to be newly subject to the time limit due to the FRA's change to include 50-to-54-year-olds (1.9 percent of total SNAP participants). Among this group, we estimated:
  - The share that are likely meeting the time limit requirement, based on information about employment status and earnings (10.6 percent).
  - The share that are likely to increase their work hours in order to begin meeting the time limit requirement, based on earnings information (3.26 percent). Specifically, this estimate is based on the share of individuals who were estimated to work 15–19 hours per week, based on the assumption that they may be able to increase their work hours to average 20 hours per week.
  - The share that are likely to not be subject to the time limit for reasons other than the three new exceptions temporarily established by the FRA because they are exempt from the general work requirement for a reason other than disability (*e.g.,* an exemption due to student status) (30 percent).
  - The average monthly per person benefit received by individuals in this group (24.9 percent of the Thrifty Food Plan (TFP)).

New Exception for Homelessness

- Share of time-limited participants (between the ages of 18–54) who are also experiencing homelessness or will imminently experience homelessness[42] (17.6 percent). Among this group, we estimated:
  - The share that are likely meeting the time limit requirement, based on information about employment status and earnings (2.7 percent).
  - The share that are likely to increase their work hours in order to begin meeting the time limit requirement (1 percent).[43] Because these individuals would begin meeting the requirement, they are removed from the pool of individuals we estimate would receive an exception from the time limit.
  - The share that are likely to not be subject to the time limit for reasons other than the three new exceptions temporarily established by the FRA because they are exempt from the general work requirement for a reason other than disability (*e.g.,* an exemption due to student status) (28 percent).
  - The average monthly per person benefit received by individuals in this group (29.4 percent of the TFP).

Estimation of New SNAP Participation Based on the New FRA Exceptions

- To estimate the likely increase in SNAP participation as a result of the new exceptions in place, the Department estimated a 1 percent increase in the number of childless adults without disabilities between the ages of 18 and 49 in the baseline. This modest estimate is based on the fact that the FRA provisions went into effect at a time when many areas had waivers of the time limit due to high unemployment rates that occurred during the COVID–19 pandemic. Hence, many of these individuals made eligible by the new exceptions may have already been participating in SNAP.

Changes in the Share of the Time-Limited SNAP Participants Between FY 2022 and FY 2024

- Given that unemployment rates had been low for an extended period of time and waiver coverage had similarly decreased, the Department believes pre-pandemic FY 2020 SNAP QC data represent a period during which time-limited participants ages 18–49 comprised a relatively small portion of the total SNAP caseload (7.3 percent of total SNAP participants). We assume that time-limited participants ages 18–49 will make up 7.3 percent of the caseload in future years, after an extended period of time with low unemployment. This represents our ''steady-state'' estimate of participation by individuals subject to the time limit, in years not affected by elevated unemployment or nationwide suspension of the time limit.
- Given that time-limited participants largely did not accrue countable months between April 2020 and June 2023 due to the temporary suspension of the ABAWD time limit for the duration of the COVID–19 Public Health Emergency authorized by the Families First Coronavirus Response Act (FFCRA), the Department believes FY 2022 SNAP QC data represent a period during which time-limited participants comprised a relatively large portion of the total SNAP caseload (9.1 percent of total SNAP participants), reflecting increased participation by this group as a result of the nationwide suspension of the time limit and extensive use of waivers of the time limit by State agencies.
- Correspondingly, the Department assumed that time-limited participants ages 18–49 make up a larger share of participants (9.1 percent) at the start of FY 2024, before declining back to 7.3 percent of participants in FY 2025 and subsequent years as was seen in pre-pandemic FY 2020 when unemployment rates were lower. This adjustment was not made to time-limited participants ages 50–54 because their share of total participants was similar in the FY 2022 and pre-pandemic FY 2020 QC data, which represent both states of high and low waiver coverage, respectively.

Veterans' Participation in SNAP and ABAWD Status From American Community Survey (ACS) Data

Given that the SNAP QC data do not include information about veteran status, the Department relied on 2022 American Community Survey (ACS) data to estimate how many individuals participating in SNAP may be subject to the ABAWD time limit *and* are veterans. The ACS data were tabulated to determine how many individuals in the U.S. have prior military service, are between the ages of 18–54, participate in SNAP, do not have a disability,[44] and do not have a child in their household.[45] Compared to the total

[41] Detailed information on the QC review process, including sampling requirements and procedures for conducting QC reviews, can be found on the FNS website at: *http://www.fns.usda.gov/snap/quality-control.*

[42] Our estimate is derived from the share of SNAP participants who meet the definition of those subject to the time limit and experiencing homeless in the FY 22 SNAP QC data. States may currently use ''imminently homeless'' as a criterion for defining homelessness. Therefore, no adjustments were made to existing data about time-limited participants who are experiencing homelessness.

[43] *Note:* We use 1 percent for this group, rather than 3.26 percent, based on the assumption that individuals experiencing homelessness will face greater challenges in increasing their work hours due to unstable housing, transportation barriers, inconsistent access to hygiene materials or professional clothing, and other challenges related to homelessness, as described by sources such as the Urban Institute (*https://www.urban.org/urban-wire/why-it-so-hard-people-experiencing-homelessness-just-go-get-job,*),the National Alliance to End Homelessness (*https://endhomelessness.org/resource/overcoming-employment-barriers/*), and the University of Michigan School of Public Health (*https://sph.umich.edu/pursuit/2020posts/homelessness-and-job-security-challenges-and-interventions.html*).

[44] As defined in SNAP rules.

[45] The ACS variables used to create this tabulation were: DRATX (''Veteran service connected disability rating''); HUPAC_RC1 (''HH

number of individuals reporting SNAP participation in the 2022 ACS, this resulted in an estimate that 0.22 percent of SNAP participants may be eligible for the new exception from the time limit for veterans. Without data on how many of these veterans would be exempt from the time limit requirement for reasons other than the three new exceptions temporarily established by the FRA (*e.g.,* an exemption due to student status), we assume the same share as time-limited participants ages 18 to 54 (32 percent).

Without data on average monthly per person benefits for time-limited participants who are also veterans, we assume that they receive the same average benefit as 18-to-54-year-old time-limited participants who are not working at least 20 hours per week (25.1 percent of the TFP).

Former Foster Youths' Participation in SNAP From Administration for Children and Families (ACF)

The SNAP QC data do not include information about participants that were formerly in the foster care system. The Department was unable to find a national survey that would permit it to estimate how many former foster youths between the ages of 18–24 participate in SNAP, nor to determine the share who may be considered subject to the time limit. In the absence of reliable data, the Department generated an estimate based on information available from the Administration for Children and Families (ACF) on how many youths age out of the foster care system each year, nationally. ACF indicates that about 20,000 youth emancipate from foster care each year,[46] resulting in a total cohort of 18–24-year-old former foster youth of up to 140,000 individuals. We adjusted the 140,000 cohort size downward to reflect the fact that about 68 percent of the U.S. population lives in States that have opted to provide foster care up to age 21,[47] so there are likely proportionally fewer 18-to-20-year-olds in the total former foster youth population. The adjustment resulted in an estimate that 99,000 former foster youth could fall into the 18–24 age group that would be eligible for the new exception from the time limit.

However, not all 99,000 individuals would participate in SNAP and be considered subject to the time limit. Using the best-available data and research on former foster youth outcomes, the Department assumes that approximately 65 percent of individuals in this group may be SNAP-ineligible, are already meeting the time limit, or are not subject to the time limit (for reasons that can include being a student, having a child in their household, or having a disability).[48] In the absence of precise data to inform the estimate, the Department estimated that the remaining 35 percent of this group will benefit from the new exception (about 35,000 individuals per year).

Without data on average monthly per person benefits for time-limited participants who are also former foster youth up to age 24, we assume that they receive the same average monthly benefit as 18-to-49-year-old time-limited participants who are not working at least 20 hours per week (25.2 percent of the TFP).

SNAP ABAWD Waiver Coverage and ACS Data on Low-Income Population

Waivers of the ABAWD time limit play a significant role in determining the number of participants who are subject to the time limit at any given time. The Department determined it was necessary to estimate the share of time-limited participants who are likely to live in a waived area to more accurately determine how many individuals would lose or retain eligibility annually due to the FRA. Without this adjustment, estimates would overstate both the increase in transfers associated with time-limited participants retaining SNAP eligibility because of the new exceptions, and the decrease in transfers associated with individuals ages 50–54 newly becoming subject to the time limit, and subsequently losing eligibility.

Internal analyses were conducted to estimate the share of participants subject to the time limit likely to live in a waived area at two different points in time, based on the assumption that FY 2023 and FY 2024 had a higher-than-usual level of waiver coverage, declining to stabilize at a lower rate in FY 2025:

(1) Quarter 4 of FY 2024, to reflect the most recent period of waiver coverage available to assess for the purposes of preparing this RIA; and

(2) Quarter 1 of FY 2020, to reflect a ''low'' degree of waiver coverage that occurred in the pre-pandemic months, after an extended period of relatively low unemployment rates nationally. This was used as a proxy estimate for waiver coverage in future years, when OMB's economic assumptions predict low unemployment rates.

To conduct these analyses, we identified the local areas covered by FNS-approved waivers [49] of the time limit in each of the above-noted time periods. Then, ACS data were used to determine the share of the low-income population (defined as below 125 percent of the FPL) in the U.S. that lived in those waived areas; the low-income population was used as a proxy for SNAP participants. The results of these analyses indicated that in FY 2024, about 45 percent of SNAP participants likely live in an area with a waiver of the time limit, and in periods of ''low'' waiver coverage, about 40 percent of SNAP participants likely live in an area with a waiver of the time limit. Additionally, analysis of SNAP QC data on the distribution of participants aged 50–54 indicates that the share of SNAP participants who live in an area with a waiver is about 10 percentage points lower, compared to those aged 18–49 years. Thus, we assume waiver coverage among those aged 50–54 years was 10 percentage points lower than those aged 18–49 years who are subject to the time limit in each time period. The Department used the estimate of waiver coverage from FY 2024 to adjust its estimates of how many individuals were affected by the FRA in that year, and used the Quarter 1 of FY 2020 waiver coverage estimate for FY 2025, onward, as waiver coverage rates are expected to stabilize in those years.

State-Reported Data on Discretionary Exemption Usage

To assess the effects of the FRA's provisions limiting States agencies' discretionary exemption allotments to 8 percent of covered individuals and preventing carryover of unused exemptions beyond one fiscal year, the Department examined State agency-reported data on discretionary exemption usage. State agencies are required to provide this data to the Department on an annual basis. The Department examined data from FY 2016–FY 2019 to understand how many exemptions States typically use. Those data indicated that State agencies typically use less than an 8 percent allotment of discretionary exemptions. The four-year period FY 2016–FY 2019 was used to represent a multi-year period during which the time limit was not lifted nationally.

Estimating the Value of State Agency, Federal, and Participant Burden

Cost estimates in this RIA account for increased burden for State agencies, the Federal Government, and SNAP participants. Hourly labor rates used to monetize burden hours in this analysis align with those presented in the final rule's burden table:

- *State agency program staff:* FY 2023 fully-loaded labor rate is $32.15. This is based on Bureau of Labor Statistics (BLS) May 2023 estimates of the median hourly wage rate for occupation code 43–4061, Eligibility Interviewers—Government Programs ($24.17) multiplied by 1.33 to represent fully-loaded wages.
- *State agency program manager:* FY 2023 fully-loaded labor rate is $53.09. This is based on BLS May 2023 estimates of the median hourly wage rate for occupation code 11–9151, Social and Community Service Managers ($39.92) multiplied by 1.33 to represent fully-loaded wages.
- *State agency computer developers:* FY 2023 fully-loaded labor rate is $52.96. This

presence and age of children recode''); FS (''Yearly food stamp/Supplemental Nutrition Assistance Program (SNAP) recipiency''); MIL_RC1 (''Military service recode''); SSIP_RC1 (''Supplementary Security Income past 12 months recode''); and AGEP_RC1 (''Age recode'').

[46] The United States Department of Health and Human Services, Administration for Children and Families publishes an annual Adoption and Foster Care Analysis and Reporting System (AFCARS) Report. The report used for this analysis is based on FY 2021 data. *https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf.*

[47] This estimate is based on information in ''States with Approval to Extend Care Provide Independent Living Options for Youth up to Age 21'' from the Government Accountability Office, *https://www.gao.gov/assets/gao-19-411.pdf.*

[48] Sources informing this estimate include: The Annie E. Casey Foundation, *https://www.aecf.org/resources/future-savings;* Chapin Hall at the University of Chicago, *https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf;* the United States Department of Agriculture, *https://www.fns.usda.gov/snap/characteristics-snap-households-fy-2020-and-early-months-covid-19-pandemic-characteristics;* and ABAWD Waiver coverage rates, *https://www.fns.usda.gov/snap/ABAWD/waivers.*

[49] All FNS-approved ABAWD Waivers are publicly-available at *https://www.fns.usda.gov/snap/ABAWD/waivers.*

is based on BLS May 2023 estimates of the median hourly wage rate for occupation code 15–0000, Computer and Mathematical Operations ($39.82) multiplied by 1.33 to represent fully-loaded wages.

- *Federal program analyst:* FY 2024 fully-loaded labor rate is $75.17. This is based on OPM 2024 salary data for the Washington-Baltimore-Arlington, DC-MD-WV-PA locality pay region for a GS–13 Step 1 employee ($56.52) multiplied by 1.33 to represent fully-loaded wages.
- *Federal supervisory analyst:* FY 2024 fully-loaded labor rate is $88.83. This is based on OPM 2024 salary data for the Washington-Baltimore-Arlington, DC-MD-WV-PA locality pay region for a GS–14 Step 1 employee ($66.79) multiplied by 1.33 to represent fully-loaded wages.
- *Federal division director:* FY 2024 fully-loaded labor rate is $104.48. This is based on OPM 2024 salary data for the Washington-Baltimore-Arlington, DC-MD-WV-PA locality pay region for a GS–15 Step 1 employee ($78.56) multiplied by 1.33 to represent fully-loaded wages.
- *SNAP participants:* The baseline labor rate is $22.74. This is based on the most recent 4 quarters of available data from the Current Population Survey (CPS) median weekly wage for full-time and salary workers, ages 16 and up ($1,137/week, divided by 40 hours to produce an hourly rate of $28.43). Because burden on SNAP participants reflects activities, like completing SNAP forms, that occur outside of an employment setting, the hourly rate derived from the weekly wage is discounted by 20 percent to remove the value of taxes and other work-related costs, resulting in $22.74.

The labor rates presented above are inflated for estimates of burden costs in future years using CPI–W projections from OMB's FY 2025 MSR President's Budget Economic Assumptions. All administrative expense estimates presented in this RIA are based on labor rates that have been inflated based on CPI–W projections.

V. Section-by-Section Analysis

The increases and decreases in SNAP benefit transfers, administrative costs, and burden hours associated with each provision of the final rule are discussed separately in this section of the RIA. Throughout the section-by-section analysis, FY 2026 is used as a reference year to provide an indication of the final rule's effect after all provisions have been phased-in.

A. Requirement To Add Purpose Language to the Food and Nutrition Act of 2008

Discussion: This provision of the FRA requires the Department to add the following program purpose to The Act: ''That program includes as a purpose to assist low-income adults in obtaining employment and increasing their earnings. Such employment and earnings, along with program benefits, will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.'' The Department adds this language as an addition to 7 CFR 271.1(a), where the general purpose and scope of SNAP are defined.

Effect on SNAP Participants: As this provision is administrative, the Department expects it will not impact program participants in a quantifiable way.

Effect on State Agencies: The Department expects no State agency burden to be incurred as a direct result of this provision.

Effect on Federal Spending: The Department expects no changes in federal administrative costs or transfers to be incurred as a direct result of this provision.

B. Requirement To Update Exceptions From the ABAWD Time Limit

There are four components that comprise this provision, which expanded the category of individuals subject to the time limit by adjusting the upper age limit from 49 to 54 on a phased-in timeline between September 2023 to October 2024 and created three new categories of exceptions from the time limit. All components of this provision will sunset on October 1, 2030, pending any future legislative changes. Because changes to exceptions from the time limit are a statutory provision, the impacts discussed in this section are generally only applicable to a without-statute comparison. This provision of the final rule has no effects when compared to a with-statute baseline, with the exception of small changes in administrative burden. Estimates derived from a with-statute baseline are discussed where relevant.

Changes to Age-Based Exceptions

Discussion: This provision gradually raised the upper age limit defining who is subject to SNAP's time limit from age 49 to age 54, thereby expanding the group of SNAP participants who are subject. Specifically, the upper age limit changed from age 49 to age 50 on September 1, 2023; from age 50 to age 52 on October 1, 2023; and from age 52 to age 54 on October 1, 2024. The time limit will apply to adults aged 18 through 54 until the sunset of this provision on October 1, 2030. This provision will sunset immediately on October 1, 2030, and is not subject to a phase-out period in FY 2031.

Only individuals aged 50 to 54 who do not qualify for an exception from the time limit (such as a physical or mental condition that limits ability to work, a certain student status, need to care for a dependent household member, or meeting an exemption from the general work requirement) are newly considered subject to the time limit.

Effect on SNAP Participants: The Department expects the changes to the age-based exception to decrease participation among SNAP participants ages 50 to 54 who are newly subject to the time limit from implementation in FY 2023 until sunset of the provision. If these individuals are not able to meet the time limit requirement, the time limit takes effect and they lose program eligibility after 3 months of SNAP participation per 36-month period unless that individual qualifies for an exception, receives a discretionary exemption, or lives in an area with a waiver of the time limit.

In FY 2026, when this provision is fully implemented, the Department (using FY 2022 SNAP QC data) estimates 1.6 percent of all SNAP participants, approximately 635,000 individuals (379,000 individuals ages 50 to 52, and 257,000 individuals ages 53 to 54) may be impacted by the age adjustments and be newly subject to the time limit because they meet the new definition of an ABAWD and are not working 20 or more hours per week.

The Department estimates that a small share (about 3.3 percent) of these individuals will be able to gain or increase their employment to at least 20 hours per month to retain SNAP eligibility. The Department based this estimate on the share of these individuals that are estimated to work at least 15 hours but less than 20 hours per week, using reported monthly earnings data in the FY 22 QC data. As a result of the increased work hours, SNAP benefits for these individuals will decrease by an average of $98 per month in FY 2026. This small share of new individuals (about 21,000 people in FY 2026) subject to the time limit will not lose SNAP eligibility because of the time limit.

The Department estimates that 30 percent of the remaining individuals will not be subject to the time limit for reasons other than the three new exceptions temporarily established by the FRA because they are exempt from the SNAP general work requirement for a reason other than disability (*e.g.,* an exemption due to student status).

Finally, the Department estimates that approximately 30 percent of the remaining individuals ages 50 to 54 will live in areas covered by a waiver of the time limit and, therefore, will not be subject to the time limit.

After these adjustments discussed above, in FY 2026 the Department estimates 301,000 individuals will lose SNAP eligibility and an average of $251 per month in SNAP benefits due to the change in the upper age limit. Individuals who lose eligibility due to the time limit may rejoin SNAP after the expiration of the 36-month period or sooner by meeting the time limit requirement, though a 2021 USDA study on the time limit suggests employment outcomes are unlikely to improve among those who lose eligibility due to the time limit. The primary results in the study found that the time limit has a small, statistically significant negative impact on employment outcomes.[50] A sensitivity analysis among a smaller group of time-limited participants in this study showed no statistically significant impact of the time limit on employment in two States and a small positive impact on employment in a third State. Therefore, the Department estimates that very few individuals who lose SNAP eligibility will be able to increase their work hours to regain SNAP eligibility within the 36-month period, particularly in light of the barriers adults over the age of 50 can face in re-entering the job market such as age discrimination by employers, increased likelihood of health challenges, and lack of training opportunities, among other reasons.[51]

At full implementation in FY 2026, the Department estimates that benefit losses among 50-to-54-year-olds newly subject to the time limit will represent a 0.88 percent reduction in total annual SNAP benefit spending (transfers), or about $855.4 million. The Department estimates federal transfers to decrease over the nine-year analysis period of FY 2023 to FY 2031 by a total of $5.2 billion because of this provision.

BILLING CODE 3410–30–P

[50] Wheaton, Laura et al. (2021) *The Impact of SNAP Able-Bodied Adults Without Dependents (ABAWD) Time Limit Reinstatement in Nine States.* Prepared by the Urban Institute for the USDA Food and Nutrition Service, 2021. Available at: *https://www.fns.usda.gov/snap/impact-snap-able-bodied-adults-without-dependents-abawd-time-limit-reinstatement-nine.*

[51] Thomassen K, Sundstrup E, Skovlund SV, Andersen LL, Barriers and Willingness to Accept Re-Employment among Unemployed Senior Workers: The SeniorWorkingLife Study, Int J Environ Res Public Health, 2020 Jul 25;17(15):5358, doi: 10.3390/ijerph17155358, PMID: 32722360; PMCID: PMC7439115.

Table 4: Participation and Federal Transfer Impacts of Changes to Age-Based Exceptions, in comparison to a without-statute baseline

Time-Limited Participants Ages 50 to 54 Losing Eligibility	Percent of Group	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31^	Total Cost
Time-limited participants ages 50 to 54 not working 20+ hours per week (000s)		-392	-659	-635	-621	-608	-595	-584	N/A	
Adjust for phase-in at certification/recertification**		196	133							
Increase work hours to 20+ hours per week	3.26%	6	17	21	20	20	19	19	N/A	
Already receiving exception (e.g., unfit for work)	30%	57	153	184	180	176	173	170	N/A	
Share that reside in area with time limit waiver		35%	30%	30%	30%	30%	30%	30%	N/A	
Reside in area with time limit waiver		46	107	129	126	124	121	119	N/A	
Total time-limited participants ages 50 to 54 estimated to lose eligibility due to changes to age-based exceptions*		**-86**	**-249**	**-301**	**-295**	**-288**	**-282**	**-277**	**0**	
	Share of TFP									
Benefit loss for those losing eligibility	24.9%	-$242	-$243	-$251	-$257	-$262	-$268	-$275	N/A	
Benefit decline for those who increase work hours	9.7%	-$95	-$95	-$98	-$100	-$103	-$105	-$107	N/A	
Average months of benefit loss per year for those losing eligibility		11	11	11	11	11	11	11	N/A	
Total Savings from time-limited participants ages 50 to 54 losing eligibility/benefits ($millions)*		**-$237**	**-$685**	**-$855**	**-$856**	**-$857**	**-$858**	**-$862**	**$0**	**-$5,209**

* Totals may not add due to rounding

** This row reduces the total number of participants by the proportion that is not impacted during years in which the provisions phase-in.

^ The age group shown in this table is no longer subject to the ABAWD time limit in FY 2031 because the provision will sunset on October 1, 2030.

BILLING CODE 3410–30–C

New Exceptions

In addition to expanding the group of individuals subject to the time limit, the FRA provides new exceptions from the time limit for individuals experiencing homelessness, who are veterans, or individuals through age 24 who were participating in foster care on their 18th birthday (or higher age if the State offers extended foster care to a higher age). Below each of these new exceptions is analyzed individually. The impact of the new exceptions on federal transfers and on SNAP participants will be itemized within discussion of each exception, while the aggregate impacts on transfers, federal burden, State agency burden, and SNAP participant burden will be summarized after the discussion of each new exception.

Individuals Experiencing Homelessness

Discussion: Prior to the FRA, individuals who were experiencing homelessness and not meeting the time limit could only continue to participate in SNAP after accruing three countable months if the State agency chose to use the State's allotment of discretionary exemptions to provide the individual with an exception from the time limit on a month-by-month basis (until the State has depleted its allotment of discretionary exemptions). A State agency may also consider an individual experiencing homeless to be ''unfit for work,'' and thereby exempt from the general work requirement and thus the time limit.

The FRA provides exceptions from the time limit for individuals experiencing homeless. To consistently implement this provision nationwide, the Department is finalizing changes to the definition of a ''homeless individual'' at 7 CFR 271.2 as proposed. The revised definition reads as follows:

Homeless Individual Means

(1) An individual who lacks a fixed and regular nighttime residence, including, but not limited to, an individual who will imminently lose their primary nighttime residence; or

(2) An individual whose primary nighttime residence is:

(i) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);

(ii) A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

(iii) A temporary accommodation for not more than 90 days in the residence of another individual; or

(iv) A public or private place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby, or similar places).''

Prior to the FRA, State SNAP agencies were already required to screen for households experiencing homelessness to identify households eligible for the homeless shelter deduction. Using SNAP QC data, the Department estimates that approximately 3.5 percent of all SNAP participants experience homelessness. However, SNAP participants who are subject to the time limit are also more likely to experience homelessness. In the most recent data available to the Department, 17.6 percent of time-limited participants experience homelessness.[52]

In FY 2026 when this provision is fully implemented, the Department (using SNAP QC data) estimates 1.8 percent of all SNAP participants, approximately 722,000 individuals (626,000 individuals ages 18 to 49, and 96,000 individuals ages 50 to 54) experiencing homelessness may be affected by the new exception from the time limit because they meet the definition of a time-limited participant and are not working 20 or more hours per week.

The Department estimates that a small share (about 1 percent) of these individuals will be able to gain or increase their employment to at least 20 hours per week to retain SNAP eligibility.

Compared to the general population of time-limited participants in SNAP, fewer participants who are experiencing homelessness are meeting the work requirement in the QC data, compared to all time-limited participants. Additionally, individuals experiencing homelessness can face substantial barriers to gaining or retaining employment, including poor access to transportation, poor access to health care, and employer stigma against individuals experiencing homelessness. Therefore, the Department believes the share of time-limited individuals who are experiencing homelessness that will be able to increase their work hours is likely smaller than the 3.4 percent observed amongst all time-limited participants in the SNAP QC data.

The Department estimates that 28 percent of the remaining individuals will not be subject to the time limit for reasons other than the three new exceptions temporarily established by the FRA because they are exempt from the general work requirement for a reason other than disability (*e.g.,* an exemption due to student status). Finally, the Department estimates that approximately 40 percent of the remaining individuals will live in areas covered by a waiver of the time limit and, therefore, will not be subject to the time limit in absence of this provision.

After these adjustments discussed above, in FY 2026 the Department estimates 309,000 individuals experiencing homelessness between the ages of 18 and 54 will retain SNAP eligibility beyond 3 months in a 36-month period (averaging to 11 months of benefits gained per individual per year) and continue receiving an average of $297 per month, per person, in SNAP benefits because of the new exception for individuals experiencing homelessness. At full implementation in FY 2026, this represents a 1.04 percent increase in total annual SNAP benefit spending (transfers), or about $1.0 billion. The Department estimates federal transfers to increase over the nine-year period of FY 2023 to FY 2031 by a total of $6.9 billion because of this new exception for individuals experiencing homelessness.

BILLING CODE 3410–30–P

[52] This estimate includes 50-to-54-year-olds newly subject to the time limit.

Table 5: Participation and Federal Transfer Impacts of New Exception for Individuals Experiencing Homelessness, in comparison to a without-statute baseline

INDIVIDUALS EXPERIENCING HOMELESSNESS	Percent of Group	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	Total Cost
Homeless time-limited participants ages 18 to 49 not working 20+ hours per week (000s)		648	649	626	612	599	586	576	564	
Adjust for phase-in at certification/recertification and phase-out**		-324							-282	
Increase work hours to 20+ hours per week	1.00%	-3	-6	-6	-6	-6	-6	-6	-3	
Already receiving exception (e.g., pregnant, unfit for work)	28%	-90	-180	-173	-170	-166	-163	-160	-78	
Share that reside in area with time limit waiver		45%	40%	40%	40%	40%	40%	40%	40%	
Reside in area with time limit waiver		-104	-185	-178	-175	-171	-167	-164	-80	
Total homeless time-limited participants ages 18 to 49 estimated to retain eligibility*		127	277	268	262	256	251	246	121	
Homeless time-limited participants ages 50 to 54 not working 20+ hours per week (000s)		59	100	96	94	92	90	88	N/A	
Adjust for phase-in at certification/recertification**		-29								
Increase work hours to 20+ hours per week	1.00%	0	-1	-1	-1	-1	-1	-1	N/A	
Already receiving exception (e.g., unfit for work)	28%	-8	-28	-27	-26	-25	-25	-25	N/A	
Share that reside in area with time limit waiver		45%	40%	40%	40%	40%	40%	40%	N/A	
Reside in area with time limit waiver		-9	-28	-27	-27	-26	-26	-25	N/A	
Total homeless time-limited participants ages 50 to 54 estimated to retain eligibility*		11	43	41	40	39	39	38	N/A	
TOTAL Homeless Time-Limited Participants Ages 18 to 54 Retaining Eligibility*		**138**	**320**	**309**	**302**	**295**	**289**	**284**	**121**	
	Share of TFP									
Benefit gain for those retaining eligibility	29.4%	$286	$287	$297	$303	$310	$318	$325	$332	
Months of benefit gain per year for those retaining eligibility		11	11	11	11	11	11	11	11	
Total Cost from Homeless Time-Limited Participants ages 18 to 54 Retaining Eligibility ($millions)*		**$436**	**$1,011**	**$1,008**	**$1,008**	**$1,009**	**$1,011**	**$1,015**	**$441**	**$6,939**

* Totals may not add due to rounding

** This row reduces the total number of participants by the proportion that is not impacted during years in which the provisions phase-in and phase-out.

BILLING CODE 3410–30–C

Veterans

Discussion: The FRA additionally provides a new exception from the ABAWD time limit for time-limited participants who are veterans. No previous unique work requirement exceptions have been applied to veterans in SNAP. To implement this change, the Department identified the need to standardize a definition of who is considered a veteran. The Department defines veteran at 7 CFR 273.24(c)(8) as an individual who, regardless of the conditions of their discharge or release from, served in the United States Armed Forces (such as the Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, and National Guard), including an individual who served in a reserve component of the Armed Forces, or served as a commissioned officer of the Public Health Service, Environmental Scientific Services Administration, or the National Oceanic and Atmospheric Administration.

Effect on SNAP Participants: The Department does not collect information on SNAP applicants' and participants' military service history, so it is unable to precisely estimate how many SNAP participants may benefit from the veteran exception. Based on data from the 2022 ACS, the Department estimates 2.5 percent of SNAP participants are veterans, but a much smaller share (0.22 percent) may be veterans who are subject to the time limit.

In FY 2026, when the FRA's provisions are fully implemented, the Department estimates approximately 88,000 individuals (60,000 individuals between the ages of 18 and 49 and 28,000 individuals ages 50 to 54) are veterans that may be affected by the new exception to the time limit because they meet the definition of a time-limited participant and are likely not working 20 or more hours per week.

The Department estimates that 32 percent of these individuals will not be subject to the time limit for reasons other than the three new exceptions temporarily established by the FRA because they are exempt from the SNAP general work requirement for a reason other than disability (*e.g.,* an exemption due to student status).

Finally, the Department estimates that approximately 40 percent of remaining individuals ages 18 to 49 and 30 percent of the remaining individuals ages 50 to 54 will live in areas covered by a geographic waiver of the time limit and, therefore, will not be subject to the time limit.

After these adjustments discussed above, in FY 2026 the Department estimates 38,000 individuals who are veterans between the ages of 18 and 54 will retain SNAP eligibility beyond 3 months in a 36-month period (averaging to 11 months of benefits gained per individual per year) and continue receiving an average of $254 per month, per person, in SNAP benefits because of the new exception from the time limit for veterans. At full implementation in FY 2026, this represents a 0.11 percent increase in total annual SNAP benefit spending (transfers), or about $105.5 million. The Department estimates federal transfers to increase over the nine-year period of FY 2023 to FY 2031 by a total of $710.6 million as a result of this new exception.

BILLING CODE 3410–30–P

Table 6: Participation and Federal Transfer Impacts of New Exception for Veterans, in comparison to a without-statute baseline

VETERANS	Percent of Group	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	Total Cost
Veteran time-limited participants ages 18 to 49 not working 20+ hours per week (000s)		62	62	60	59	57	56	55	54	
Adjust for phase-in at certification/recertification and phase-out**		-31							-27	
Already receiving exception (e.g., pregnant, unfit for work)	32%	-10	-20	-19	-19	-18	-18	-18	-9	
Share that reside in area with time limit waiver		45%	40%	40%	40%	40%	40%	40%	40%	
Reside in area with time limit waiver		-10	-17	-16	-16	-16	-15	-15	-17	
Total veteran time-limited participants ages 18 to 49 estimated to maintain eligibility*		12	25	24	24	23	23	23	11	
Veteran time-limited participants ages 50 to 54 not working 20+ hours per week (000s)		17	29	28	27	27	26	26	N/A	
Adjust for phase-in at certification/recertification**		-9								
Already receiving exception (e.g., unfit for work)	32%	-3	-9	-9	-9	-9	-8	-8	N/A	
Share that reside in area with time limit waiver		35%	30%	30%	30%	30%	30%	30%	N/A	
Reside in area with time limit waiver		-2	-6	-6	-6	-5	-5	-5	N/A	
Total veteran time-limited participants ages 50 to 54 estimated to maintain eligibility*		4	14	13	13	13	12	12	N/A	
TOTAL Veteran Time-Limited Participants Ages 18 to 54 Retaining Eligibility*		**15**	**39**	**38**	**37**	**36**	**35**	**35**	**11**	
	Share of TFP									
Benefit gain for those retaining eligibility	25.1%	$245	$245	$254	$259	$265	$271	$278	$284	
Months of benefit gain per year for those retaining eligibility		11	11	11	11	11	11	11	11	
Total Cost Veteran Time-Limited Participants ages 18 to 54 Retaining Eligibility ($millions)*		**$42**	**$106**	**$105**	**$106**	**$106**	**$106**	**$106**	**$34**	**$711**

* Totals may not add due to rounding

** This row reduces the total number of participants by the proportion that is not impacted during years in which the provisions phase-in and phase-out.

BILLING CODE 3410–30–C

Individuals Who Were in Foster Care

Discussion: The third new exception from the time limit prescribed by the FRA is for SNAP participants aged 24 and under who were in foster care on their 18th birthday, including those who remain in extended foster care in States that have elected to extend foster care under Sec. 475(8)(B)(iii) of the Social Security Act. The Department notes that this definition does not require that an individual was in foster care in the State in which they are applying for or receiving SNAP benefits.

The Department is clarifying that ''foster care under the responsibility of a State'' includes foster care programs run by any State, District, Territory, Indian Tribal Organization, or Unaccompanied Refugee Minors Program. The Department also clarified that the exception applies to individuals who turned 18 while in a foster care program even if they leave extended foster care before the maximum age.

Effect on SNAP Participants: The Department does not collect data on SNAP applicants' and participants' history in foster care, so it is unable to precisely estimate how many individuals will benefit from the new exception for former foster youth. Based on information from the Adoption and Foster Care Analysis and Reporting System (AFCARS) [53] about how many youths age out of foster care each year, the Department estimates that there are approximately 99,000 individuals between the ages of 18 and 24 who were in foster care at their 18th birthday but have since emancipated. Of those 99,000 individuals, the Department estimates that about 35,000 may be SNAP participants (0.09 percent of all SNAP participants in FY 2026) who are subject to the time limit and are not otherwise qualified for an exception. The remaining 64,000 individuals in this group are assumed to be not eligible for SNAP, already meeting the time limit requirement, or not subject to the time limit (for reasons that can include being a student, having a child in their household, or having a disability).

In FY 2026, among these 35,000 individuals estimated to be current SNAP participants, the Department estimates that approximately 40 percent will live in areas that are covered by a geographic waiver of the time limit, and therefore will not be subject to the time limit. Therefore, the Department estimates about 21,000 individuals who are former foster youth will retain SNAP eligibility beyond 3 months in a 36-month period (averaging to 11 months of benefits gained per individual per year) and continue receiving an average of $254 per month in FY 2026 because of this new exception. In FY 2026, this represents a 0.06 percent increase in total annual SNAP benefit spending (transfers), or about $58.2 million. The Department estimates federal transfers to increase over the nine-year period of FY 2023 to FY 2031 by a total of $419.6 million as a result of this new exception.

BILLING CODE 3410–30–P

[53] Per ACF guidance to States, States must include in AFCARS all children in foster care under the responsibility for placement or care of the State title IV–B/IV–E agency, which includes Unaccompanied Refugee Minors. More detail can be found at: *https://www.acf.hhs.gov/orr/policy-guidance/clarification-unaccompanied-refugee-minor-urm-eligibility-chafee-independent.*

Table 7: Participation and Federal Transfer Impacts of New Exception for Individuals Who Were in Foster Care, in comparison to a without-statute baseline

FORMER FOSTER YOUTH	Percent of Group	FY24	FY25	FY26	FY27	FY28	FY29	FY30	FY31	Total Cost
Former foster youth through age 24 (000s)		35	35	35	35	35	35	35	35	
Adjust for phase-in at certification/recertification and phase-out**		-17							-17	
Share that reside in area with time limit waiver		45%	40%	40%	40%	40%	40%	40%	40%	
Reside in area with time limit waiver		-8	-14	-14	-14	-14	-14	-14	-7	
Total Former Foster Youth Time-Limited Participants Estimated to Retain Eligibility*		**10**	**21**	**21**	**21**	**21**	**21**	**21**	**10**	
	Share of TFP									
Benefit gain for those retaining eligibility	25.2%	$245	$246	$254	$260	$266	$272	$278	$285	
Months of benefit gain per year for those retaining eligibility		11	11	11	11	11	11	11	11	
Total Cost from Former Foster Youth Time-Limited Participants Retaining Eligibility ($millions)*		**$26**	**$56**	**$58**	**$60**	**$61**	**$62**	**$64**	**$33**	**$420**

* Totals may not add due to rounding

** This row reduces the total number of participants by the proportion that is not impacted during years in which the provisions phase-in and phase-out.

Combined Impacts for All Changes to Exceptions—Federal Transfers

As a result of this final rule, the estimated net impact of the change in the age-based exceptions and the three new exceptions is an average net increase in SNAP participation of about 95,000 individuals per year when fully implemented in FY 2026. In FY 2026, this includes 301,000 participants losing eligibility, 367,000 participants retaining eligibility, and about 29,000 new participants.[54] The Department estimates that a small number of new participants (ages 18–49) will begin receiving SNAP benefits due to the new exceptions allowing individuals who are experiencing homelessness, are veterans, or were formerly in the foster care system to participate in SNAP who otherwise may have thought they would be ineligible due to the time limit. The Department estimates federal transfers to increase over the nine-year period of FY 2023 to FY 2031 by a total of $3.5 billion as a result of the change in the age-based exceptions and the new exceptions in the FRA. On an annual basis, federal transfers are estimated to increase by an average of $393.1 million. These estimates are based on a without-statute comparison. There are no transfer effects under a with-statute comparison.

[54] This estimate of about 29,000 new participants assumes an increase of roughly 1 percent in the baseline number of time-limited adults ages 18 to 49. This is the Department's best estimate in the absence of better data.

Table 8: Combined Participation and Federal Transfer Impacts of Exception Updates, in comparison to a without-statute baseline

Summary of SNAP Benefit Transfers Due to the SNAP Final Rule Implementing *The Fiscal Responsibility Act of 2023*									
	FY24	**FY25**	**FY26**	**FY27**	**FY28**	**FY29**	**FY30**	**FY31**	**Total Cost**
Total time-limited participants ages 50 to 54 estimated to lose eligibility (000s)	-86	-249	-301	-295	-288	-282	-277	N/A	
Total savings from time-limited participants ages 50 to 54 losing eligibility/benefits ($millions)	-$237	-$685	-$855	-$856	-$857	-$858	-$862	N/A	-$5,209
Total homeless, veteran, and former foster youth time-limited participants ages 18 to 54 retaining eligibility (000s)	163	380	367	360	352	346	340	142	
Total cost from time-limited participants ages 18 to 54 retaining eligibility ($millions)	$504	$1,173	$1,171	$1,173	$1,176	$1,179	$1,185	$508	$8,069
New Participants (000s)	-	30	29	29	28	27	27	13	
Total Cost from New Participants ($millions)	$0	$104	$104	$104	$104	$104	$105	$53	$678
NET PARTICIPANT IMPACT (000s)*	**77**	**161**	**95**	**94**	**92**	**91**	**89**	**155**	
NET COST ($millions)*	**$267**	**$593**	**$420**	**$422**	**$423**	**$425**	**$428**	**$561**	**$3,538**

* Totals may not add due to rounding.

BILLING CODE 3410–30–C

Combined Impacts for All Changes to Exceptions—Household Burden Costs

The Department expects there to be an increased time burden for 50-to-54-year-old SNAP participants who are newly considered to be subject to the time limit. These individuals will be required to report work hours and review and respond to notices informing them of the additional work requirement and time limit. Based on estimates provided in the burden table prepared for the final rule, an estimated 517,171 individuals will experience an annual 15.5-minute burden related to these activities for total time of 133,602 hours annually and an annual cost of $3.2 million in FY 2026. In addition, 282,056 individuals within this group will also need to review and respond to Notices of Adverse Action (NOAAs) when they lose SNAP eligibility due to not meeting the time limit, estimated to be an additional 4-minute burden per person for a time of 18,804 hours annually and a total annual cost of $448,846 in FY 2026.

Upon sunset of this provision on October 1, 2030, the upper limit of ages subject to the time limit will reverse to age 49 and the three new exceptions will be removed, pending any future legislative updates. Any 50-to-54-year-old participants who were subject to the time limit will stop accruing any countable months immediately on October 1, 2030. The Department expects 50-to-54-year-old participants who lost eligibility due to the time limit to return to the program gradually beginning in FY 2031. However, the Department is unable to estimate whether some eligible individuals will not return to the program due to being unaware of changes in the work requirement rules, stigma, or any other reason. As individuals who had not been subject to the time limit during the duration of this rule due to the three new exceptions within the rule become subject to the time limit and lose SNAP eligibility at their next recertification or screening during FY 2031, the Department estimates a one-time burden on 327,404 participants of 19.5 minutes related to work reporting administrative activities and to review and respond to NOAAs for a total of $2.8 million in FY 2031. These estimates are based on a without-statute comparison. Since this provision is required by statute, there are no household burden costs compared to a with-statute baseline.

Combined Impacts for All Changes to Exceptions—State Agency Administrative Costs

Implementation: State agencies began incurring administrative costs to implement the FRA's changes to exceptions from the time limit in FY 2023 through various administrative activities, such as updating State eligibility systems; preparing for and executing worker training; updating relevant applications, notices, and forms; updating State SNAP regulations; and spending additional time with program participants to discuss program changes in relation to the individual's case.

The State administrative burden for initial implementation activities for all provisions of the final rule was estimated to be approximately 469,177 hours nationwide, costing State agencies $10.3 million for start-up activities in FYs 2023 and 2024, after 50 percent federal cost reimbursement.

Ongoing: On an ongoing basis, State agencies will need to discuss the time limit requirement, verify hours worked, and provide appropriate noticing to individuals who are newly subject to the time limit (estimated at 517,171 participants). This is estimated to take 15.5 minutes per individual and cost an estimated $2.3 million in FY 2026, after 50 percent federal cost reimbursement. The State agency will incur an additional 4-minute burden for each of the estimated 282,056 participants who will need to be issued Notices of Adverse Action (NOAAs) due to not meeting the time limit for a total annual cost of $327,479 in FY 2026, after 50 percent federal cost reimbursement.

Sunsetting: For the sunsetting of this provision on October 1, 2030, the Department estimates that State agencies will again need to complete eligibility system updates; train eligibility workers; update relevant applications, notices, and forms; update State SNAP regulations; and spend time with program participants who will be impacted by this change. The sunsetting administrative costs are estimated to be a total one-time burden of 575,583 hours nationwide, costing State agencies about $14.3 million in FYs 2030 and 2031, after 50 percent federal cost reimbursement. These sunsetting costs are required to implement the statutory requirements and are estimated against the without-statute baseline.

Combined Impacts for All Changes to Exceptions—Federal Administrative Costs

Implementation: In addition to the federal transfer effects previously discussed, the Department estimated it took the Federal Government approximately 90 hours to make all administrative updates pertaining to implementation of this final rule, resulting in an estimated one-time total expense of $6,902 incurred in FY 2024. Of these 90 hours, the Department has identified that approximately 1.25 hours were spent by the Federal Government to implement the non-statutory screening provision (discussed further in part ''D. Screening,'' below); the Department estimates the remaining 88.75 hours to apply to the statutory provisions, including for all changes to exceptions. Additionally, the federal share of State agencies' administrative expenses to implement all provisions of the final rule was estimated to be a total one-time cost of $10.3 million for start-up activities incurred in FYs 2023 and 2024; all State agency start-up costs are based in statutory provisions.

Ongoing: To provide administrative support throughout the duration of the FRA's changes to exceptions from the time limit, the Department estimates ongoing administrative costs to the Federal Government to be on average $36.8 million annually during years of full implementation (FY 2026–FY 2030) for the federal share of State agencies' ongoing administrative expenses.

Sunsetting: The Department estimates a one-time cost of $14.3 million in FYs 2030 and 2031 for the Federal share of State agencies' administrative sunsetting expenses. Additionally, the Department estimates it will take the Federal Government 63 hours to sunset all applicable provisions of this rule on October 1, 2030, with a total one-time federal administrative burden of $5,949 in FY 2030, compared to a without-statute baseline. Of these 63 hours, 2.25 of them are related to the non-statutory screening provisions (detailed in part ''D. Screening,'' below); the remaining 60.75 hours are related to the statutory provisions within this rule.

C. Requirement To Adjust the Number of Discretionary Exemptions Available to State Agencies Each Year

Discussion: The FRA reduces the allotment of discretionary exemptions State agencies will accrue in each fiscal year. Prior to the FRA, each fiscal year each State agency accrued an allotment of one-month exemptions equal to 12 percent of its at-risk time-limited participants; this FRA provision lowers that rate to 8 percent, beginning with the allotment State agencies had available for use in FY 2024. The provision also restricts each State's ability to carryover unused discretionary exemptions between fiscal years from all unused discretionary exemptions to only those allotted during the prior fiscal year. Starting in FY 2026, State agencies will only carryover unused discretionary exemptions earned for the previous fiscal year, not including historical balances, and are instructed to apply discretionary exemptions in the order of accrual on a ''first-in, first-out'' basis. The impacts discussed in this section are estimated using a without-statute baseline for comparison. This provision has no effect when measured against a with-statute baseline.

Effect on SNAP Participants: It is difficult to predict the precise impacts of these two changes within each State, as well as across States. If a State agency was consistently using a high proportion of discretionary exemptions under the prior allotment of 12 percent, a small number of SNAP participants in that State may no longer receive a discretionary exemption and therefore lose SNAP eligibility as a result of the time limit. If a State agency was not using a high proportion of their discretionary exemptions prior to the FRA change, this change may have no effect on SNAP participants in that State. The most recent data available to Department indicate that State agencies typically use less than an 8 percent allotment of discretionary exemptions.

Between FY 2016 and FY 2019, only five instances were identified in which a State did not exceed their annual allotment, but used more exemptions than they would have earned for the fiscal year, assuming an allotment based on 8 percent of covered individuals.[55] As a result, this analysis scores

[55] Based on State agency-reported data on discretionary exemption usage. FY 2016–FY 2019 is used as the most recent period of data available as these are the most recent years in which State agencies used discretionary exemptions and during which the time limit was not waived nationwide by FFCRA.

the provision to lower allotments to 8 percent of covered individuals as having, at most, a nominal effect on SNAP benefit spending (transfers).

However, those State agencies that have exceeded an 8 percent allotment have tended to use many more exemptions than they had accrued for the relevant fiscal year. In other words, those States drew upon their banks of carried over exemptions. In the FY 2016–FY 2019 period, there were 33 instances of State agencies using carried over exemptions. Over those 33 instances, a total of 832,048 ''banked'' exemptions were used. Given that one exemption permits one time-limited participant to participate in SNAP for one additional month, this equates to approximately 69,337 individuals gaining a full year of SNAP participation (832,048 divided by 12 months) over the four-year period, or 17,334 individuals annually, on average. The Department does not have information on why States opted to use carried over exemptions in each of these cases. However, State agencies are known to use discretionary exemptions to exempt individuals from the time limit in areas that have been affected by a natural disaster or to mitigate the effects of an area losing coverage by a waiver of the time limit.

Beyond FY 2025, State agencies will no longer carryover unused exemptions indefinitely, which will reduce some State agencies' banks of available exemptions. As a result, State agencies may have reduced ability to use discretionary exemptions to extend time-limited individuals' SNAP participation in similar scenarios. However, the Department is unable to predict how many such scenarios could occur in future years and how a State agency would choose to use discretionary exemptions, nor how many individuals subject to the time limit may be affected.

When preparing the proposed rule, the Department theorized that State agency application of discretionary exemptions could change in FY 2024 and FY 2025, as State agencies could attempt to ''spend down'' discretionary exemptions that would otherwise expire. The ''use-or-lose'' scenario could have incentivized some State agencies to use more discretionary exemptions in FYs 2024 and 2025, which would have resulted in fewer individuals losing SNAP eligibility due to the time limit in these two fiscal years. However, data available from the first three quarters of FY 2024 indicate that discretionary exemption usage in FY 2024 is within the range of exemption usage rates that occurred between FY 2016–FY 2019. With the FY 2024 data indicating no changes to discretionary exemption application rates and given that State agencies typically under-use the discretionary exemptions available to them, the Department has not estimated any measurable changes to SNAP participation or transfers to occur in this final rule.

Effect on State Agencies: The implementation of this provision may require some State agencies to reconsider the State's approach to using discretionary exemptions, which could add burden hours for these State agencies. We are unable to estimate how many State agencies may be affected but estimate the administrative burden to be nominal.

Effect on Federal Spending: The Department estimates nominal changes in federal transfers because of reductions in discretionary exemption allotments, from 12 percent to 8 percent, and restrictions on carryover of unused exemptions beyond one fiscal year. While a decrease in available discretionary exemptions would mean a federal transfer savings if States consistently used all discretionary exemptions available to them each year prior to the reduction, State agencies' past patterns of discretionary exemption usages and data available from the first three quarters of FY 2024 suggest they will not fully apply all discretionary exemptions available to them.

As previously discussed in the analysis of changes to exceptions, the Department expects it took the Federal Government approximately 90 hours to make all administrative updates pertaining to implementation of this rule, resulting in an estimated one-time total expense of $6,902 incurred in FY 2024. The Department estimates that 1.25 of these hours are related to the non-statutory screening provision, detailed in the following section, with the other 88.75 hours related to all statutory provisions. Additionally, as previously discussed, the federal share of State agencies' administrative expenses to implement all provisions of the final rule was estimated to be a total one-time cost of $10.3 million incurred in FYs 2023 and 2024. This provision is not expected to generate any ongoing administrative costs to the Federal Government. Finally, there are no sunsetting administrative costs pertaining to this provision, as it is enacted on a permanent basis.

D. Screening

Discussion: These provisions require an evaluation by the eligibility worker of an individual for all exemptions from the general work requirement, all exceptions from the time limit, and whether the individual should be referred for participation in an employment and training program.[56] The Department refers to this process as ''screening.'' Currently, screening is required at initial and recertification application as the Act provides that individuals must not be subject to the time limit if they meet one of the exceptions listed in Sec. 6(o)(3) of the Act. However, this requirement has not been codified in regulation to date. In the final rule, the Department clarifies that State agencies must screen individuals for all exemptions and continue screening even once an individual meets one exemption. State agencies are prohibited from assigning countable months to an individual if the State agency has not screened them for all exceptions, including the new exceptions established by the FRA. If an individual subject to the time limit has a change in circumstances that results in them now meeting an exception, the State agency cannot assign a countable month if the information is not questionable. This is a longstanding expectation of State agencies that the Department is codifying in the final rule to ensure countable months are not applied inappropriately. These screening provisions now being codified in regulation are existing expectations necessary to apply the exemptions and exceptions required by statute (including those added by the FRA).

Based on comments, the final rule also adds a requirement that State agencies are required to apply the exception that will last the longest when an individual meets more than one exception. This new requirement is the only non-statutory provision within the final rule, and therefore, the only provision that results in quantifiable effects under a with-statute comparison. In the analysis that follows, impacts will be discussed compared to without-statute and with-statute baselines.

Effect on SNAP Participants: Screening provisions are intended to ensure consistent application of screening standards and practices by all State agencies. The Department does not currently have information available that would indicate changes in how many individuals may retain SNAP eligibility as a result of codifying this requirement for State agencies to screen for exceptions from the time limit and exemptions from the SNAP work requirements.

While there are no estimated benefit changes as a result of these screening provisions, SNAP participants are expected to bear an administrative burden due to increased screening. FNS estimates that screening for exceptions from the time limit and screening for exemptions from the general work requirement each require approximately 4 minutes of a participant's time. Some participants will only incur a 4-minute burden because they are only subject to the general work requirement. Individuals subject to the time limit are also subject to the general work requirement and therefore will incur 8 minutes of burden, per screening. In total, screening will affect approximately 20.1 million SNAP participants and equal approximately 1.9 million additional hours annually in FY 2026. This would equate to an estimated annual burden of $44.5 million across all individuals in FY 2026. Because this provision of the rule does not sunset, it will result in ongoing costs beyond FY 2030, though we note that after FY 2030 screening for the time limit will again only apply to 18-to-49-year-olds, reducing burden on individuals aged 50 to 54.

We do not estimate any burden on participants that is attributable to the non-statutory requirement to apply the longest exception, so there are no participant burden costs when compared to a with-statute baseline.

Effect on State Agencies: State agencies are expected to bear the administrative cost of updating their internal screening policies and practices; train workers on new procedures; and carry out any other administrative steps necessary to implement this provision. As discussed previously, the State administrative burden for initial implementation activities for all provisions of the final rule was estimated to be approximately 469,177 hours nationwide, costing State agencies $10.3 million for start-

[56] Screening for participation in employment and training programs is not considered a part of the E&T program.

up activities (including system changes) incurred in FYs 2023 and 2024, after 50 percent federal cost reimbursement. These implementation costs were required to implement the statutory requirements and are estimated against the without-statute baseline.

Due to the additional estimated 4 or 8 minutes of time spent with participants during the screening process, explained above, the average annual projected administrative burden to State agencies is 1.5 million hours, or approximately $32.4 million annually in FY 2026 after 50 percent federal cost reimbursement, when compared to a without-statute baseline. Of the State agency staff time spent screening participants, approximately 0.5 minutes are estimated to be related to the non-statutory requirement to apply the longest exception to the client's case. When compared to a with-statute baseline, the Department estimates an average annual administrative burden to State agencies of 177,142 hours, or approximately $4.1 million in FY 2026 after 50 percent federal cost reimbursement.

Because the screening provisions of the rule do not sunset, there are no expected administrative costs of sunsetting these provisions.

Effect on Federal Spending: Federal administrative burden associated with implementing the final rule in a without-statute comparison have been discussed in previous sections of the RIA. In a with-statute comparison, the Department estimates 1.25 hours of federal administrative burden to implement the non-statutory screening provision to apply the longest lasting exception (an approximately $97 cost at start-up in FY 2024).

The ongoing federal share of State agencies' administrative expenses to comply with this update is estimated to be approximately $32.4 million annually in FY 2026 for 53 State SNAP agencies in a without-statute comparison. In a with-statute comparison, the estimated federal share of State agencies' administrative expenses is estimated to be approximately $4.1 million annually in FY 2026.

While the screening provisions are enacted on a permanent basis, the Department estimates 2.25 hours of federal administrative burden in relation to providing guidance to State agencies regarding identifying exceptions that last the longest, due to sunset of the three new exceptions identified in the FRA, and how to operationalize the changes when screening for the longest exception. This cost to the Federal Government is estimated to be $187 in FY 2030.

VI. Qualitative Assessment

There are secondary impacts of the FRA's provisions—that might be in addition to the direct impacts discussed in the preceding section, or might represent different manifestations of the same effects—which are difficult to quantify, like effects on food security, poverty, and health. As such, this section will qualitatively discuss current research on the secondary effects of SNAP participation. The Department notes that while there are studies that generally describe the relationships between SNAP, food security, poverty, and health care costs, these studies do not permit quantitative estimation of costs or benefits specific to the time-limited SNAP participants affected by this final rule.

Several studies have attempted to measure the effect of SNAP receipt on food insecurity. One study has estimated receipt of SNAP to reduce the likelihood of being food insecure by roughly 30 percent and to reduce the likelihood of being very food insecure by 20 percent.[57] Another study estimates the impact of SNAP participation to reduce food insecurity by 7.1 percentage points.[58] A third study concludes that among the group of SNAP recipients who reported being most food insecure prior to program participation, receipt of SNAP is shown to increase the likelihood of having high food security by 20 to 30 percentage points.[59] While the precise estimates on reduction of food insecurity vary depending on the study's methodology, SNAP participation is shown to increase the food security of participating households. The outcomes of these studies lead the Department to expect that individuals who retain or gain SNAP eligibility as a result of the provisions of this final rule (estimated to be 397,000 individuals in FY 2026) may experience improved food security. Correspondingly, individuals who lose SNAP eligibility as a result of this rule's provisions (estimated to be 301,000 individuals in FY 2026) may experience increased likelihood of food insecurity.

Furthermore, increased food security is shown to positively impact broader health outcomes, benefiting the person directly as well as reducing societal health care costs. A USDA report titled ''Food Insecurity, Chronic Disease, and Health Among Working-Age Adults'' documents the correlation between low food security status and higher rates of chronic health conditions, finding that ''the number of chronic conditions for adults in households with low food security is, on average, 18 percent higher than for those in high-food secure households.'' [60] The range of working-aged adults (defined in this report as ages 18 to 64) in households with lower food security status have elevated probabilities of chronic disease diagnosis for all 10 conditions examined in the report. Additionally of note, given the group of individuals losing SNAP eligibility as a result of this rule is limited to 50-to-54-year-olds, this research also indicates an increased likelihood of chronic illness with age, potentially exacerbating the impact of the loss of SNAP for this older cohort of childless adults without disabilities.

In another study examining the relationship between food security and health as measured by cost-related medication underuse, it was found that compared to those with high food security, those with very low food security had about 4 times higher odds of skipping medication to save money.[61] Aside from the direct health benefit to the individual, SNAP participation is also shown to reduce health care spending [62] [63] [64] and improve health as measured by the participant's self-assessed health, sick days, office-based visits, and outpatient visits.[65] The Department expects, based on this research, that individuals who gain or retain SNAP eligibility (397,000 in FY 2026) as a result of this final rule could have improved health outcomes and therefore incur lower health care expenditures, while the inverse is expected for individuals who will lose SNAP eligibility (301,000 in FY 2026) due to this rule's provisions.

SNAP receipt is also estimated to support the economy beyond food expenditures. One USDA study finds the gross domestic product (GDP) multiplier of SNAP during an economic downturn to be 1.5, which means that $1 billion in new SNAP spending during a downturn ''induces further new spending in the economy that collectively increases GDP by $1.54 billion, supports 13,560 jobs, and creates $32 million in farm income.'' [66]

[57] Ratcliffe, C., McKernan, S. and Zhang, S. (2011), ''How Much Does the Supplemental Nutrition Assistance Program Reduce Food Insecurity?'', Amer. J of Ag. Econ., 93: 1082–1098. *https://doi.org/10.1093/ajae/aar026.*

[58] Christopher A. Swann, ''Household history, SNAP participation, and food insecurity'', Food Policy, Volume 73, 2017, Pages 1–9, ISSN 0306–9192, *https://www.sciencedirect.com/science/article/pii/S0306919217306796.*

[59] Partha Deb, Christian A. Gregory, ''Who Benefits Most from SNAP? A Study of Food Security and Food Spending'', National Bureau of Economic Research, Working Paper 22977, December 2016, *http://www.nber.org/papers/w22977.*

[60] Christian A. Gregory, Alisha Coleman-Jensen, ''Food Insecurity, Chronic Disease, and Health Among Working-Age Adults'', ERR–235, U.S. Department of Agriculture, Economic Research Service, July 2017, *https://www.ers.usda.gov/publications/pub-details/?pubid=84466.*

[61] Dena Herman, Patience Afulani, Alisha Coleman-Jensen, Gail G. Harrison, ''Food Insecurity and Cost-Related Medication Underuse Among Nonelderly Adults in a Nationally Representative Sample'', American Journal of Public Health 105, no. 10 (October 1, 2015): pp. e48–e59. *https://doi.org/10.2105/AJPH.2015.302712.*

[62] Berkowitz SA, Seligman HK, Rigdon J, Meigs JB, Basu S, ''Supplemental Nutrition Assistance Program (SNAP) Participation and Health Care Expenditures Among Low-Income Adults'', JAMA Intern Med. 2017 Nov 1;177(11):1642–1649. doi: 10.1001/jamainternmed.2017.4841. PMID: 28973507; PMCID: PMC5710268.

[63] Kollannoor-Samuel, G., Boelcke-Stennes, K.A., Nelson, J., Martin, E., Fertig, A.R., & Schiff, J. (2022). ''Supplemental Nutrition Assistance Program Participation is Associated with Lower Health Care Spending among Working Age Adults without Dependents'', Journal of Health Care for the Poor and Underserved 33(2), 737–750. *https://doi.org/10.1353/hpu.2022.0060.*

[64] Lisa Dillman, Ph.D., MEd, Joan Eichner, DrPH, MPH, MPA, Ashley Humienny, MBA, Suzanne Kinsky, Ph.D., MPH, Qingfeng Liang, MS, MA, Elaine Yuen Ling Kwok, Ph.D., CCC–SLP, and Julian Xie, MD, MPP, ''The Impact of Supplemental Nutrition Assistance Program (SNAP) Enrollment on Health and Cost Outcomes,'' NEJM Catal Innov Care Deliv 2023;4(6), May 2023, *https://catalyst.nejm.org/doi/full/10.1056/CAT.22.0366.*

[65] Christian A. Gregory, Partha Deb, ''Does SNAP improve your health?'', Food Policy, Volume 50, 2015, Pages 11–19, ISSN 0306–9192, *https://doi.org/10.1016/j.foodpol.2014.09.010.* (*https://www.sciencedirect.com/science/article/pii/S0306919214001419*).

[66] Canning, Patrick and Brian Stacy, ''The Supplemental Nutrition Assistance Program (SNAP) and the Economy: New Estimates of the SNAP

Continued

Another study similarly found evidence that SNAP receipt had positive sizable impacts on food, housing, and education expenditures.[67] As individuals are gaining or losing SNAP benefits as a result of this rule, the Department expects the corresponding expenditures on food or other goods and the resulting impact on the economy to fluctuate in the same direction as the overall transfer impact of this rule.

Furthermore, should the country experience another economic downturn similar to the COVID–19 pandemic or for another unforeseen reason throughout the 9-year analysis period of this rule, the Department would expect to see spending impacts related to the estimated 1.5 multiplier.

In conclusion, the individuals who will retain or gain eligibility for SNAP benefits are more likely to experience increased food security, improved health outcomes, and lower health care expenditures than those without SNAP benefits. Conversely, individuals who will lose SNAP benefits as a result of this rule are more likely to experience the opposite of these benefits—decreased food security, worsened health outcomes, and higher health care expenditures.

VII. Distributive Impacts

Distributive impacts discussed in this section are based on analyses using a without-statute baseline for comparison.

A. Differences in State-Level Impacts

Effects of the FRA's provisions in the final rule vary by State due to differences in demographics, as well as differences in how States administer SNAP. For example, States that regularly qualify for and request waivers of the time limit will have smaller portions of their participants affected by changes to the time limit requirement. The provision to make 50-to-54-year-olds subject to the time limit will have slightly different effects on States' participants, depending on the share of their participants that falls into the newly expanded ABAWD age range. While 1.9 percent of all SNAP participants are estimated to fall into the expanded 50-to-54-year-old age range of time-limited participants, the share of each State's SNAP participants varies from 0.7 percent in Wyoming, to 3.3 percent in the District of Columbia. See Appendix Table A for estimates for each State.

Similarly, the distribution of individuals experiencing homelessness across the U.S. is not uniform. Information available from the U.S. Department of Housing and Urban Development (HUD) indicates that the homeless population in the U.S. is concentrated in a handful of States. The January 2023 Point-in-Time estimates[68] of homeless individuals from HUD indicate that over half of all individuals experiencing homelessness in the U.S. (56.8 percent) lived in just five States: California, New York, Florida, Washington, and Texas. California, alone, accounted for 27.8 percent of all individuals experiencing homelessness in the Point-in-Time Count.

The share of each State's SNAP participants who are experiencing homelessness, or are time-limited participants *and* experiencing homelessness, also varies. Nationally, about 3.5 percent of SNAP participants are experiencing homelessness, according to FY 22 SNAP QC data. More specifically, about 1.9 percent of SNAP participants are considered subject to the time limit and experiencing homelessness. The State with the lowest share of time-limited participants experiencing homelessness is Texas (0.2 percent) and the State with the highest share is Rhode Island (4.7 percent). See Appendix Table B for estimates for each State.

It should be noted that the accuracy of the estimates in this section can be affected by the size of a State's caseload. States with smaller caseloads also have smaller SNAP QC data samples, which can affect the reliability of State-level estimates for sub-groups of the SNAP caseload, like those experiencing homelessness.

B. Differences Among Subgroups

While the time limit does not apply to individuals who are considered disabled or elderly by SNAP rules, the Department acknowledges that some SNAP participants who are elderly or disabled may nevertheless be affected by the provisions in the final rule. A small share of individuals subject to the time limit (7.3 percent) are in a SNAP household with an elderly or disabled person. If these individuals lose eligibility because of the time limit, their household will experience a decrease in total SNAP benefits available to the household. The provisions included in this final rule will not affect SNAP households with children, as individuals subject to the time limit, by definition, do not have children in their SNAP household.

Individuals affected by the provisions in the final rule are more likely to be male, when compared to all adults between ages 18 and 54 in the SNAP caseload (51 percent, compared to 35 percent). While participants subject to the time limit between ages 18 and 54 and those who experience homelessness are more likely to be male (51 percent and 65 percent, respectively), those who are over age 50 are more likely to be female (52 percent). See Table 9, below, for estimates of the sex of SNAP participants in several subgroups affected by the final rule's provisions. The Department does not have data on the sex of SNAP participants who are subject to the time limit who are also veterans or former foster youth.

Table 9: Sex of SNAP Participants Affected by Final Rule's Provisions

Sex	All SNAP participants ages 18-54	Time-limited participants, ages 18-49	Time-limited participants, ages 50-54	All time-limited participants, ages 18-54	Time-limited participants, ages 18-54 experiencing homelessness
Male	35%	52%	48%	51%	65%
Female	65%	48%	52%	49%	35%
Total	100%	100%	100%	100%	100%

Data from FY 2022 SNAP QC data.

The distribution of races and Hispanic ethnicity among SNAP participants affected by the final rule is generally similar to the distribution among all SNAP participants ages 18 to 54. SNAP participants subject to the time limit ages 18 to 54 have roughly the

Multiplier,'' ERR–265, U.S. Department of Agriculture, Economic Research Service, July 2019. *https://www.ers.usda.gov/webdocs/publications/93529/err-265.pdf?v=7831.1.*

[67] Jiyoon Kim, ''Do SNAP participants expand non-food spending when they receive more SNAP Benefits?—Evidence from the 2009 SNAP benefits increase,'' Food Policy, Volume 65, 2016, Pages 9–20, ISSN 0306–9192, *https://doi.org/10.1016/j.foodpol.2016.10.002.* (*https://www.sciencedirect.com/science/article/pii/S0306919216304341.*)

[68] Available here: *https://www.huduser.gov/portal/datasets/ahar/2023-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html.*

same likelihood of being white or black (38 percent and 29 percent, respectively) as all SNAP participants ages 18 to 54 (38 percent and 27 percent). SNAP participants who are subject to the time limit and experiencing homeless have a similar distribution of races and Hispanic ethnicity as all SNAP participants and all time-limited participants. While the measures are close, individuals experiencing homelessness are slightly less likely to be white or Hispanic or Latino of any race (35 percent and 11 percent, respectively) than SNAP participants ages 18 to 54 (38 percent and 12 percent), and more likely to be black (33 percent) compared to all SNAP participants ages 18 to 54 (27 percent). It is important to note that the Department does not have data on the race or ethnicity of 17 percent of SNAP participants ages 18 to 54, which could affect these estimates. See Table 10, below, for estimates of the race and ethnicity of SNAP participants in several subgroups affected by the final rule's provisions. The Department does not have SNAP QC data on the race or ethnicity of SNAP participants who are subject to the time limit who are also veterans or former foster youth.

Table 10: Race and Ethnicity of SNAP Participants Affected by Final Rule's Provisions[69]

Race/Ethnicity	All SNAP participants ages 18-54	Time-limited participants, ages 18-49	Time-limited participants, ages 50-54	All time-limited participants, ages 18-54	Time-limited participants, ages 18-54 experiencing homelessness
White	38%	37%	47%	38%	35%
American Indian/Alaska Native	1%	1%	1%	1%	1%
Asian	2%	2%	3%	2%	1%
Black or African American	27%	30%	24%	29%	33%
Native Hawaiian or Pacific Islander	0.4%	0.4%	0.2%	0.3%	0.2%
Multiple Races	2%	2%	3%	3%	2%
Hispanic or Latino of any race	12%	12%	9%	11%	11%
Missing	17%	15%	13%	15%	17%
Total*	100%	100%	100%	100%	100%

Data from FY 2022 SNAP QC data.
*Totals may not add due to rounding.

VIII. Uncertainties

A. Effectiveness of Screening for New Exceptions

In this analysis, the Department assumes that all individuals subject to the time limit are correctly screened for qualifying exceptions. For example, we assume that all individuals who are experiencing homelessness and subject to the time limit are correctly excepted. Human error (which could be contributed to by instances of understaffing in State agencies) is likely to result in some share of individuals not receiving an exception for which they qualify, as well as some individuals receiving an exception for which they do not qualify. It is also possible that some participants will not disclose information that could lead to an exception (for example, a participant may not want to disclose their experience with the foster care system). As a result, the count of SNAP participants who lose eligibility or retain eligibility due to the final rule could be higher or lower in reality. However, given that the Department estimates that the share of individuals losing eligibility is very similar to the share receiving one of the three new exceptions, we do not anticipate that the overall net transfer impact of the rule would change significantly.

B. ABAWD Waiver Coverage in Future Years

The number of SNAP participants who are subject to the time limit at any given time is affected by the extent of geographic waivers of the ABAWD time limit. In this RIA, we assume the national unemployment rate will remain low through FY 2031. As a result, we also assume that fewer SNAP participants (about 40 percent) will live in an area covered by a waiver of the time limit than is true during economic downturns, like the Great Recession or the COVID–19 public health emergency. If a higher share of individuals live in an area where the time limit is waived, then both transfer increases and decreases will be reduced. Fewer 50-to-54-year-olds would lose eligibility due to the time limit, reducing transfer savings. Conversely, if individuals who receive an exception from the time limit due to being a veteran, homeless, or a qualifying former foster youth live in an area with a waiver of the time limit, there would be no transfer increase associated with their retaining eligibility because of an exception.

Alternatively, if a lower share of individuals live in an area where the time limit is waived, then both transfer increases and decreases would rise. However, given that the Department estimates that the share of individuals losing eligibility is very similar to the share of individuals retaining eligibility, we do not anticipate that the overall net transfer impact of the rule would change significantly.

[69] This table does not comply with OMB's Statistical Policy Directive (SPD) No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, because the data were collected prior to SPD 15's publication on March 28, 2024. More information can be found here: *https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and.*

C. Number of Individuals Who Will Be Eligible for New Exceptions for Veterans and Former Foster Youth

Unlike homelessness, the Department does not gather data on whether SNAP applicants or participants are veterans or former foster youth. Therefore, we are unable to precisely estimate how many individuals who may be subject to the time limit may benefit from these two new exceptions. This RIA contains the Department's best estimates of how many individuals may be affected. If the number of individuals who receive one of these two new exceptions is higher than anticipated, there would be a slight increase in transfers. If the number is lower than anticipated, there would be a slight decrease in transfers. Given that the Department believes time-limited individuals who are veterans or former foster youth up to age 24 make up a small portion of SNAP participants (cumulatively, approximately 0.31 percent of participants), we do not expect this uncertainty to result in significant changes to the net transfer impact associated with the final rule.

IX. Sensitivity Analysis

Table 11, below, illustrates how the RIA's estimates might change if different assumptions regarding the uncertainties discussed above were used. Each scenario is measured against a without-statute baseline for comparison. Sensitivity analysis estimates were produced using the same general methodology as the primary estimates in the RIA. Alternative assumptions used for the sensitivity analysis include:

A. Assume 10 percent of estimated groups receiving a new exception are not appropriately identified during screening and do not receive the exception.

B. Assume employment outcomes are worse than anticipated and waiver coverage settles at 10 percentage points higher than projected.

C. Assume employment outcomes are better than anticipated and waiver coverage settles at 10 percentage points lower than projected.

Table 11 breaks down each scenario's impact on overall federal transfers during the first year of full implementation (FY 2026), as well as over the nine-year analysis period of this RIA, FY 2023 through FY 2031.

Table 11: Sensitivity Analysis, in comparison to a without-statute baseline

Estimated Change in SNAP Benefits ($Millions)	One-Year (FY 2026)	Nine-Year (FY 2023 – 2031)
In RIA as finalized	$420.1	$3,538.2
Scenario A: Assume 10% less effective screening for exceptions	$292.6	$2,663.4
Scenario B: Assume 10 percentage point increase in waiver coverage	$344.5	$2,916.7
Scenario C: Assume 10 percentage point decrease in waiver coverage	$495.8	$4,159.6

The final rule results in a 0.40 percent increase in total SNAP benefit spending over the nine-year period of analysis, or $420.1 million in FY 2026 and $3.5 billion over FY 2023–FY 2031. If screening for the three new exceptions in this rule were to be conducted with only 90 percent efficacy (thereby reducing the number of those excepted by 10 percent) as demonstrated in Scenario A, total SNAP benefit spending would increase to a smaller degree, by 0.30 percent. In FY 2026, Scenario A would decrease the cost of the final rule by $127.5 million, compared to the primary estimates in this RIA. Over the nine-year period FY 2023–FY 2031, Scenario A would decrease the cost of the final rule by approximately $874.7 million, compared to the primary estimates in this RIA. The smaller increase in transfers under Scenario A is due to fewer time-limited participants retaining SNAP eligibility as a result of the FRA's three new exceptions from the time limit.

Analyses of Scenarios B and C indicate that a 10-percentage point increase or decrease to the share of individuals covered under waivers of the time limit would result in a corresponding $75.6 million increase or decrease in overall SNAP spending in reference year FY 2026 ($621.5 million over FY 2023–FY 2031) compared to the primary estimates in this RIA. This represents approximately a 0.07 percentage-point increase or decrease in transfer spending.

X. Alternatives

With one exception, the policy changes analyzed in this RIA were prescribed by the FRA; therefore, assessment of policy alternatives is limited.

Alternatives Considered in the Proposed Rule

The proposed rule would implement changes to exceptions from the time limit in a way that closely adheres to the FRA's statutory language. To implement the FRA's changes to the time limit, the Department had provided definitions of who qualifies for the FRA's new exceptions from the time limit for individuals experiencing homelessness, veterans, and former foster youth up to age 24 in the proposed rulemaking. However, these definitions do not expand upon the categories included in the FRA.

The Department had determined the clarification of definitions of who qualifies for the FRA's new exceptions to have limited effect on the welfare effects of the rule. The Department did not consider alternative definitions for these groups in the proposed rule because it sought to align its definitions with the terms used in the FRA and with definitions used by federal agencies who are experts in serving those groups, to the extent allowable by the Food and Nutrition Act of 2008, as amended.

The Department also proposed to amend the regulations to clarify requirements for screening individuals for exceptions from the work requirements and time limit. This provision required State agencies to screen for exceptions at initial and recertification application and prohibits them from assigning countable months to an individual if the State agency has not screened the individual for exceptions. Further, it also addressed State agency responsibilities when an individual experiences a change in circumstances during the certification period that results in a change in exception status.

The Department considered finalizing the proposed rule without this screening requirement. Omitting the screening requirement would not have had a measurable effect on transfers, but may have reduced measurable State administrative expenses and federal administrative costs. However, in the absence of regulations clarifying screening requirements, questions from State agencies arose during FRA implementation of how and when it may identify if an individual meets one of the new exceptions from the time limit. Screening is implicitly necessary absent any action in this rule. As such, the Department determined that standardizing national screening practices was necessary to improve consistency in program operations and provide quality customer service in line with the December 13, 2021, Executive Order on *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.* To effectively ensure screening practices are standard across State agencies, the Department proposed requiring State

agencies to first screen for exemptions from the general work requirement, as this is an important first step in evaluating which, if any, work requirements apply to an individual, since individuals are not subject to the time limit if they meet an exemption from the general work requirement. The proposed rule therefore clarified requirements on both screening for the general work requirement, as well as to determine whether an individual is subject to the time limit, in order to ensure uniform national practices.

Alternatives Considered in the Final Rule

Comments received on the proposed rule have been reviewed, discussed, and responded to in the preamble to this final rule. This section will summarize any policy changes from the proposed rule that were considered due to public comment and could have had an impact on the estimates in this RIA.

During the public comment period, the Department received 17 comments on the definition of ''homeless individual,'' with several of these requesting a more explicit definition of ''imminently homeless'' and several requesting to add a list of scenarios that would meet the criteria of ''imminently homeless.'' The Department assessed the possibility of updating the definition provided in line with these comments, but decided to finalize the definition as proposed in order to maintain flexibility for State agencies to review how other assistance programs define homeless individuals and better coordinate across programs to identify and reduce administrative burden in verifying individuals who meet the exception. Had this definition been revised to a more prescriptive definition, the Department would have estimated a moderate change to State administrative burden and to the burden on individuals throughout the screening process.

The Department additionally received two comments requesting clarification that screening of individuals must be performed orally. The Department determined that adjusting this requirement in all cases can limit flexibility in responding to changing needs of SNAP participants and State agencies. As such, the Department recommends that State agencies conduct screenings orally as a best practice. In consideration of this alterative, the Department also notes that imposing the requirement of oral screenings would have increased the administrative burden associated with this provision.

As noted in consideration of alternatives during development of the proposed version of this rule, the provisions in this final rule are largely driven by the FRA's mandate, leaving limited room for consideration of alternatives while finalizing the rule. The Department did not consider any further alternatives for inclusion in either the proposed or final rule.

BILLING CODE 3410–30–P

Appendix Table A: Estimated Share of the SNAP Participants Who Are 50-to-54-Year-Old Time-Limited Participants, by State

State	Share of participants that are 50-to-54-years-old and time-limited
Alabama	1.8%
Alaska	1.8%
Arizona	2.1%
Arkansas	2.5%
California	1.7%
Colorado	3.1%
Connecticut	2.5%
Delaware	2.5%
District of Columbia	3.3%
Florida	2.0%
Georgia	1.4%
Guam	0.8%
Hawaii	2.5%
Idaho	1.1%
Illinois	2.0%
Indiana	1.4%
Iowa	2.2%
Kansas	1.3%
Kentucky	2.1%
Louisiana	1.5%
Maine	1.8%
Maryland	2.8%
Massachusetts	1.6%
Michigan	1.9%
Minnesota	1.2%
Mississippi	1.7%
Missouri	1.5%
Montana	1.8%
Nebraska	1.7%
Nevada	2.3%
New Hampshire	0.9%
New Jersey	1.0%
New Mexico	2.4%
New York	2.0%
North Carolina	2.2%
North Dakota	1.2%
Ohio	2.0%
Oklahoma	1.8%
Oregon	2.7%

Pennsylvania	1.8%
Rhode Island	1.7%
South Carolina	2.0%
South Dakota	1.5%
Tennessee	1.8%
Texas	1.4%
Utah	2.0%
Vermont	1.2%
Virginia	3.1%
Virgin Islands	2.5%
Washington	2.8%
West Virginia	2.7%
Wisconsin	2.0%
Wyoming	0.7%
U.S. Total	1.9%

Appendix Table B: Estimated Share of the SNAP Participants Who Are Time-Limited and Experiencing Homelessness, by State

State	Share of participants experiencing homelessness	Share of participants who are time-limited and experiencing homelessness
Alabama	1.0%	0.7%
Alaska	4.8%	1.9%
Arizona	4.3%	3.1%
Arkansas	1.3%	0.8%
California	9.0%	4.6%
Colorado	5.9%	3.8%
Connecticut	1.9%	1.4%
Delaware	4.1%	2.5%
District of Columbia	8.5%	3.9%
Florida	2.8%	1.2%
Georgia	2.2%	1.4%
Guam	1.1%	0.7%
Hawaii	4.6%	2.2%
Idaho	3.1%	0.3%
Illinois	2.0%	1.4%
Indiana	2.3%	1.5%
Iowa	1.0%	0.9%
Kansas	2.4%	1.3%
Kentucky	1.3%	0.6%
Louisiana	2.4%	1.1%
Maine	2.8%	1.2%
Maryland	2.8%	1.6%
Massachusetts	5.6%	3.0%
Michigan	4.2%	2.7%
Minnesota	3.5%	1.6%
Mississippi	0.4%	0.3%
Missouri	4.3%	2.6%
Montana	4.2%	1.8%
Nebraska	2.7%	1.7%
Nevada	4.8%	3.0%
New Hampshire	3.1%	2.1%
New Jersey	2.5%	1.1%
New Mexico	5.6%	4.2%
New York	3.5%	2.3%
North Carolina	1.3%	0.6%
North Dakota	1.4%	0.5%
Ohio	2.2%	0.7%
Oklahoma	1.7%	1.1%
Oregon	6.6%	3.3%
Pennsylvania	0.7%	0.5%

Rhode Island	6.0%	4.7%
South Carolina	1.8%	0.8%
South Dakota	2.1%	1.6%
Tennessee	2.5%	1.6%
Texas	0.8%	0.2%
Utah	6.6%	4.1%
Vermont	5.7%	2.2%
Virginia	1.5%	0.9%
Virgin Islands	3.4%	1.6%
Washington	6.5%	4.7%
West Virginia	0.6%	0.5%
Wisconsin	5.2%	3.7%
Wyoming	1.4%	0.5%
U.S. Total	**3.5%**	**1.9%**

[FR Doc. 2024–29072 Filed 12–16–24; 8:45 am]
BILLING CODE 3410–30–C



FEDERAL REGISTER

Vol. 89 Tuesday,
No. 242 December 17, 2024

Part V

Department of Transportation

14 CFR Part 382
Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2022–0144]

RIN 2105–AF14

Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or the Department) is issuing a final rule to strengthen its regulation implementing the Air Carrier Access Act (ACAA) and to address the serious problems that individuals with disabilities using wheelchairs and scooters face when traveling by air that impact their safety and dignity, including mishandled wheelchairs and scooters and improper transfers to and from aircraft seats, aisle chairs, and personal wheelchairs. This final rule also carries out certain rulemaking provisions required by the FAA Reauthorization Act of 2024.

DATES: This rule is effective January 16, 2025.

FOR FURTHER INFORMATION CONTACT: Christopher Miller, Vinh Nguyen, Robert Gorman, or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *christopher.miller1@dot.gov, vinh.nguyen@dot.gov, robert.gorman@dot.gov,* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this final rule is to increase access to safe and dignified air travel for individuals with disabilities. The Department is committed to ensuring that our air transportation system is safe and accessible for all. Air travel connects individuals to family and friends, jobs, and vital services, and it opens the door to opportunity. However, air travel can be especially difficult for individuals who use wheelchairs or scooters and rely on disability-related physical assistance and services provided by U.S. and foreign air carriers [1] (''carriers'' or ''airlines'') and their contractors. Damaged and delayed personal wheelchairs and assistive devices and untimely and unsafe assistance provided by airlines can lead to serious life disruptions such as loss of mobility independence, personal injury, lost opportunities and wages, and other significant harms. Some wheelchair users even avoid flying altogether because of these risks.

B. Statutory Authority

The Air Carrier Access Act, 49 U.S.C. 41705, prohibits discrimination because of disability in airline service by U.S. and foreign air carriers. When it enacted the ACAA, Congress directed the Department ''to promulgate regulations to ensure non-discriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers.'' Public Law 99–435, section 3, 100 Stat. 1080, 1080 (1986). The Department responded by issuing a final rule that required carriers to provide nondiscriminatory service to individuals with disabilities.[2] The Department has continually updated these regulations pursuant to the ACAA, Congressional mandate,[3] and with the Department's rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out its statutory duties, including prescribing regulations.[4] The Department considers the mishandling of wheelchairs, scooters, and assistive devices, and unsafe, undignified, and untimely wheelchair assistance, to constitute discrimination on the basis of disability.[5] Those actions impose burdens on passengers with disabilities that they do not impose on passengers without disabilities. Those actions also deny passengers full and equal access to carriers' services.

To the extent that violations of the ACAA and part 382 occur in interstate air transportation, the incidents are also violations of 49 U.S.C. 41702, which requires air carriers to provide safe and adequate interstate air transportation. The Department has long recognized section 41702 may be used to ensure ''safe and adequate'' service in a civil rights context.[6] The Department has also previously found that violations of the ACAA and 14 CFR part 382 are unfair practices under 49 U.S.C. 41712.[7] A practice is unfair if it (1) causes or is likely to cause substantial injury to consumers, (2) cannot be reasonably avoided by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition.[8]

Additionally, section 440 of the FAA Reauthorization Act of 2018 [9] (''2018 FAA Act'') directs the Department to review, and if necessary revise, applicable regulations to ensure that passengers with disabilities receive dignified, timely, and effective assistance at airports and onboard aircraft from trained personnel. It also directs the Department to ensure that airline personnel who provide physical assistance to passengers with disabilities receive annual training that includes, as appropriate, hands-on instructions and the appropriate use of relevant equipment.[10]

The FAA Reauthorization Act of 2024 [11] (''2024 FAA Act'') contains multiple accessibility measures to improve travel for passengers who use wheelchairs. Section 542 of the 2024 FAA Act directs the Department to issue a rulemaking to develop requirements for minimum training standards for airline personnel or contractors who assist wheelchair users who board or deplane using an aisle chair or other boarding devices. Section 543 directs the Department to issue a rulemaking to develop requirements for minimum training standards for airline personnel or contractors related to stowage of wheelchairs and scooters used by passengers with disabilities on aircraft.

---

[1] ''Carrier'' is defined as ''a U.S. citizen (''U.S. carrier'') or foreign citizen (''foreign carrier'') that undertakes, directly or indirectly, or by a lease or any other arrangement, to engage in air transportation.'' 14 CFR 382.3.

[2] *See* 55 FR 8008 (Mar. 6, 1990).

[3] *See, e.g.,* Nondiscrimination on the Basis of Disability in Air Travel, 73 FR 27614 (May 13, 2008) (revised part 382 to comply with Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, which, among other things, amended the ACAA to include foreign carriers in the prohibition against discriminating against qualified individuals with disabilities).

[4] *See, e.g.,* Accessible Lavatories on Single Aisle Aircraft, 88 FR 50020 (Aug. 1, 2023); Traveling by Air with Service Animals, 85 FR 79742 (Dec. 10, 2020); and Accessibility of websites and Automated Kiosks at U.S. Airports, 78 FR 67882 (Nov. 12, 2013).

[5] *See e.g.,* United Airlines, Inc., Order 2016–1–3 (Jan. 15, 2016); US Airways, Inc., Order 2013–11–4 (Nov. 4, 2013); American Airlines, Inc, Order 2003–3–1 (Mar. 4, 2003); and Northwest Airlines, Inc., Order 2002–2–11 (Feb. 11, 2002).

[6] *See e.g.,* Frontier Airlines, Inc., Order 2017–7–8 (July 21, 2017); United Airlines, Inc., Order 2016–1–3 (Jan. 15, 2016); U.S. Airways, Inc., Order 2003–3–19 (Mar. 26, 2003); American Airlines, Inc., Order 2003–3–1 (Mar. 4, 2003).

[7] *See e.g.,* American Airlines, Inc., Order 2024–10–15 (Oct. 23, 2024); Allegiant Air, LLC, Order 2018–4–8 (Apr. 13, 2018); American Airlines, Inc., Order 2013–12–4 (Dec. 6, 2013); JetBlue Airways Corp., Order 2010–12–17 (Dec. 13, 2010).

[8] 14 CFR 399.79(b).

[9] The FAA Reauthorization Act of 2018, Public Law 115–254, Sec. 440 (Oct. 5. 2018).

[10] The Department notes that the 2018 FAA Act also increased the civil penalties related to harm to passengers with disabilities and required the Department to develop the Airline Passengers with Disabilities Bill of Rights.

[11] The FAA Reauthorization Act of 2024, Public Law 118–63, Sec. 544 (May 16, 2024).

Section 544 directs the Department to issue a rule directing carriers to publish information relating to aircraft cargo hold dimensions, in order to better inform passengers about the limitations of an aircraft's ability to accommodate assistive devices. This section of the Act also requires carriers to offer a refund to individuals for fares, fees, and taxes paid for a flight that cannot accommodate the passenger's assistive device.[12]

C. Background

The Department has long been concerned about the safe and dignified treatment of passengers with disabilities, including passengers who use wheelchairs, scooters, and other assistive devices. Disability rights advocates have raised concerns to the Department regarding unsafe, inadequate, and undignified assistance that individuals with mobility disabilities receive from airlines when flying. These concerns have primarily focused on delayed and damaged personal wheelchairs or scooters, unsafe transfers to and from wheelchairs and aircraft seats, and lack of prompt wheelchair assistance at the airport. Advocates have also maintained that damage to passengers' personal wheelchairs or scooters can result from insufficient training.

Today, passengers who use wheelchair cannot travel in their own wheelchairs and must surrender their wheelchairs to an airline for stowage prior to travel. This means passengers must rely on airline staff and contractors to properly handle a wheelchair or scooter and return it in a timely manner in the condition it was received. The advocates have stressed to the Department that, when an individual's wheelchair or scooter is delayed or damaged by an airline, the individual's mobility, health, and freedom are impacted until the device can be returned, repaired, or replaced. Advocates note that wheelchairs are often custom fitted to meet the needs and shape of each user. Spending time in an ill-fitting chair can cause serious injury, such as pressure sores, and even death because of a subsequent infection. Further, loaner devices may lack the customized assistive technology that helps the individual communicate or breathe and have inadequate functions that limit mobility. A disability organization also asserted that, according to its survey, the top reason individuals with mobility disabilities avoid travel is because of concerns about wheelchair damage.[13]

On March 24, 2022, the Department held a Public Meeting on Air Travel by Persons Who Use Wheelchairs. Hundreds of individuals participated in the meeting and submitted written comments to the meeting's docket. The Department heard firsthand stories from passengers whose lives and health were seriously impacted by unsafe assistance and mishandling of their wheelchairs or scooters.[14] Commenters also discussed the need for enhanced training for personnel and contractors providing physical assistance to individuals with disabilities and handling wheelchairs. The Department addressed these issues in its Notice of Proposed Rulemaking (NPRM) on Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs, which was published in the **Federal Register** on March 12, 2024.[15]

More specifically, in the NPRM, the Department proposed various measures to improve the air travel environment for individuals with disabilities. First, we proposed to codify our longstanding interpretation of the ACAA that assistance to individuals with disabilities must be provided in a safe and dignified manner. Second, we proposed that assistance must be prompt, with promptness to be determined based on the totality of the circumstances except when physical assistance is needed to disembark the aircraft. Third, we proposed that any mishandling of passengers' wheelchairs or other assistive devices is a *per se* violation of the ACAA, subjecting an airline to a separate penalty. Fourth, we proposed to define ''mishandling'' as ''lost, delayed, damaged, or pilfered,'' consistent with existing DOT rules on baggage mishandling.[16] Fifth, we proposed that when a wheelchair or scooter is mishandled, airlines must immediately notify a passenger of the right to file a claim with the airline, to receive a loaner wheelchair, to choose a preferred vendor for repairs or replacement, and to discuss with a Complaints Resolution Official (CRO). Sixth, we proposed to require airlines to timely notify passengers when wheelchairs or scooters are loaded and unloaded, and when the wheelchair does not fit on an aircraft. Seventh, we proposed to require airlines to transport a delayed wheelchair to a passenger's final destination within 24 hours by whatever means possible. Eighth, we proposed that if a wheelchair or scooter is mishandled, airlines must provide the choice of repairing/replacing the device itself or allowing the passenger to arrange for repairs/replacements through the passenger's preferred vendor. Ninth, we proposed that airlines must provide and pay for loaner wheelchairs after airline mishandlings, and that airlines must consult with the passenger to ensure that the loaner wheelchair meets the passenger's functional and safety-related needs to the maximum extent possible. Tenth, we proposed that airlines provide annual training, including hands-on training, of airline employees and contractors who physically assist passengers with mobility disabilities or handle passengers' wheelchairs or scooters. We also included a proposed definition of ''hands-on training,'' and proposed to require that airlines consult with disability advocacy organizations when developing and changing their training programs. Finally, we proposed an expanded rollout of on-board wheelchairs (OBWs) with improved safety and accessibility features.

We also sought comment on additional topics, including but not limited to: (1) whether other types of status notifications about checked wheelchairs and scooters should be required of airlines (*e.g.,* notification regarding stowage location of the passenger's wheelchair or scooter on the

[12] The Department's Office of Aviation Consumer Protection has for many years interpreted 49 U.S.C. 41712 and 41705 as requiring carriers provide prompt refunds when a passenger does not take a flight because the flight does not accommodate the passenger's assistive device such as a wheelchair. The 2024 FAA Act codifies the Department's longstanding interpretation.

[13] Paralyzed Veterans of America's (PVA) informal online survey, titled *The ACAA Survey,* and its results were published in September 2022 and can be accessed online at *https://pva.org/wp-content/uploads/2022/09/2022-ACAA-Survey-Results-FINAL.pdf.*

[14] Many of the participants expressed concern about the October 2021 death of disability activist Engracia Figueroa, several months after an incident involving damage to her wheelchair. Following this incident, in September 2023, the Department entered into an agreement with United Airlines. Under the Agreement, United will: (1) roll out a flight filter on its booking engine to make it easier for passengers who use wheelchairs to find flights where their wheelchairs can fit and be safely transported; (2) refund the fare difference for passengers using the flight filter when the passenger's preferred flight cannot accommodate their wheelchair and the flight that they travel on with their wheelchair is more expensive; (3) conduct a pilot program to explore whether additional equipment, such as a medical wheelchair or other form of moveable or non-moveable chair, can be utilized to safely accommodate passengers waiting for loaner wheelchairs; and (4) seek feedback from each passenger who checks a wheelchair for transport in the aircraft cargo compartment. See *https://www.transportation.gov/airconsumer/DOT-United-Airlines-Agreement-Improve-Wheelchair-Access-PDF.*

[15] Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs, 89 FR 17766 (Mar. 12, 2024).

[16] See 14 CFR 234.6 (requiring airlines to annually report mishandling of wheelchairs and scooters).

flight); (2) whether airlines should be required to provide dimensions of their cargo compartments prior to travel for passengers with wheelchairs or scooters; (3) whether airlines should be required to provide safe and adequate seating accommodations at the airport while passengers wait for delayed wheelchairs or loaner wheelchairs; (4) whether airlines should be required to reimburse passengers for consequential costs from delayed wheelchairs; (5) whether airlines should be required to use durable medical equipment (DME) suppliers to carry out repairs; (6) whether airlines should be required to provide passengers a specified period to ensure that the repairs to wheelchairs or scooters carried out by the airline are adequate; (7) whether airlines should be required to offer minor/temporary wheelchair repairs at the airport to enable passengers to leave the airport with their personal wheelchair and seek a full repair at a more convenient date; (8) whether airlines should be required to reimburse passengers for consequential costs due to inadequate loaners that restrict their mobility or independence; (9) whether airlines should be required to designate wheelchair experts and transfer experts to be consulted in the event that a complex issue or problem arises while handling a passenger's personal wheelchair or while physically assisting a passenger with a disability; (10) whether to require airlines to expand the size of lavatories on twin-aisle aircraft; and (11) whether airlines should be required to reimburse the difference between the fare on a flight a wheelchair user took, and the fare on a flight that the wheelchair or scooter user would have taken if his or her wheelchair or scooter had been able to fit in the cabin or cargo compartment of the aircraft.

The comment period for the NPRM was originally scheduled to close on May 13, 2024. Airlines for America (A4A), the International Air Transport Association (IATA), the National Air Carriers Association (NACA), the Regional Airline Association (RAA), and the Airline Service Providers Association (ASPA) (collectively, the Associations) asked for a 90-day extension of time to file comments. The Department extended the comment period for 30 days, to June 12, 2024.[17] The Department also responded to a series of questions posed by the Associations and placed those responses in the rulemaking docket.[18]

The Department received 1,897 comments from individuals[19] and 73 comments from stakeholder organizations. Of the stakeholder organization comments, 40 were from disability rights organizations, 14 were from airlines and airline associations, and 19 were from other organizations representing airports, flight attendants, aircraft manufacturers, labor unions, medical personnel, and others.

To broadly summarize, disability rights organizations generally supported the rulemaking and welcomed DOT's action in this area. On some topics, advocates were split on whether DOT's proposals were appropriate or whether they should be strengthened, particularly on the topic of training. Airlines often indicated that they supported the underlying goals of the Department's proposal but argued that DOT's underlying assumptions may be flawed and that its economic analysis may not fully capture the costs of the rule. Airlines often suggested amendments stating that they were necessary to prevent passengers from having unrealistic expectations about the services and accommodations that airlines can offer and provide. Individual commenters overwhelmingly supported the rulemaking. A fuller analysis of the comments received is set forth in the discussion of each topic below.

D. Summary of Major Provisions

The compliance date for these provisions is January 16, 2025, unless otherwise stated.

BILLING CODE P

[17] See 89 FR 38852 (May 8, 2024).

[18] The questions and the Department's responses are available at *https://www.regulations.gov/document/DOT-OST-2022-0144-1318.*

[19] This total includes approximately 1,055 form letters.

SUBJECT	FINAL RULE
Safe and Dignified Assistance	Clarifies that safe and dignified assistance to individuals with disabilities is required when providing required accommodations. See § 382.11(b). Defines *safe* to mean assistance provided to individuals with disabilities that does not put them at heightened risk of bodily injury, which may include loss or damage to wheelchairs and other assistive devices that result in bodily injury. See § 382.3. Defines *dignified* to mean assistance provided in a manner that respects a passenger's independence, autonomy, and privacy, which includes but is not limited to: airline personnel providing transfer assistance in a manner that ensures the passenger's clothing is not removed; airline personnel not unduly delaying requests for access to a restroom such that the individual soils himself or herself; and, to the maximum extent possible, airline personnel communicating directly with the individual with disability (e.g., rather than his or her companion or another individual) when the individual with disability is interacting with them. See § 382.3.
Prompt Enplaning, Deplaning, and Connecting Assistance	Clarifies that prompt enplaning, deplaning, and connecting assistance is required, including moving within the airport terminal. See § 382.89(a). Determines prompt based on the totality of circumstances, except when physical assistance is needed to disembark the aircraft, in which case prompt means that: (1) personnel and boarding wheelchair must be available to deplane the passenger when the last passenger who did not request deplaning assistance departs the aircraft; and (2) the passenger's personal wheelchair or scooter must be available as close as possible to the door of the aircraft to the maximum extent possible, except: (a) where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials, (b) or when the passenger requests the wheelchair or scooter be returned at a location other than the door of the aircraft. If the passenger requests the wheelchair or scooter be returned at a location other than the door of the aircraft, an airport wheelchair must be available for the passenger's use. See § 382.89(b) and (c).
Rebuttable Presumption of a Violation	Defines *mishandled* to mean lost, delayed, damaged, or pilfered (i.e., stolen). See § 382.3. Clarifies that airlines must return checked wheelchairs and other assistive devices to the passenger in the condition in which they are received. Specifies that whenever a passenger's checked wheelchair or other assistive device that was in the airline's custody is not returned to the passenger in the same condition it was received, there is a rebuttable

	presumption that the airline mishandled the passenger's wheelchair or other assistive device in violation of the ACAA. Specifies what an airline must demonstrate to overcome the presumption of a violation. See § 382.130(a).
Passenger Notifications	Required Information Prior to Departure • Requires airlines to notify passengers in writing when they are checking their wheelchairs or scooters that if their wheelchair or scooter is mishandled, they have the right to contact a CRO and a right to file a claim with the airline. Airlines must inform passengers how to contact the CRO. See § 382.125(e). • Requires airlines to notify passengers whether their wheelchairs or scooters have been loaded onto their flights (including whether their device could not fit on the passenger's scheduled flight because of its size or weight) before the aircraft cabin door closes. See § 382.125(f)(1). Compliance date is on or after December 17, 2025. Required Information Upon Arrival • Requires airlines to notify passengers, before the passengers deplane, when their wheelchairs or scooters have been unloaded from the cargo compartment of their flights. See § 382.125(f)(3). Compliance date is on or after December 17, 2025. Required Information After Wheelchair or Scooter is Mishandled • Requires airlines to notify in writing passengers whose wheelchairs or scooters have been mishandled of their rights: (1) to file a claim with the airline, (2) to receive a loaner wheelchair from the airline with certain customizations, (3) to choose a preferred vendor, if desired, for device repairs or replacement, and (4) to have a CRO available and be provided information on how to contact the CRO. See § 382.130(b). Compliance date is on or after March 17, 2025. • Requires airlines to provide status update notifications to passengers on their delayed wheelchairs or scooters when there is a status change. See § 382.130(c)(3). Requires all notifications to be accessible. See §§ 382.125(e) and (f)(4) and 382.130.
Publication of Information Related to Aircraft Cargo Holds	Requires airlines to publish in a prominent and easily accessible place on their public websites, information describing the relevant dimensions and other characteristics of the cargo holds of all aircraft types operated by the airline, including the dimensions of the cargo hold entry. See § 382.41(b).
Prompt Return of Delayed Wheelchairs or Scooters	Requires airlines to transport a delayed wheelchair or scooter to the passenger's final destination within 24 hours of the passenger's arrival for domestic flights and short international flights (12 hours or less in duration) and within 30 hours of the passenger's arrival for long international flights (more than 12 hours in duration). Airlines must

	transport the device by whatever means are available to do so safely. See § 382.130(c)(1). Requires airlines to provide the passenger a choice between picking up the delayed wheelchair or scooter at his or her destination airport or having the wheelchair or scooter delivered to a reasonable location requested by the passenger, such as the passenger's home or hotel. See § 382.130(c)(2). Specifies that the delay starts when a passenger arrives at his/her destination but his/her personal wheelchair or scooter does not and the delay ends when a passenger either picks up the delayed wheelchair or scooter at his or her destination airport or the delayed wheelchair or scooter is delivered by the airline to the passenger at a reasonable location such as the passenger's home or hotel. See § 382.130(c)(2). Compliance date is June 16, 2025.
Reimbursement for Accessible Ground Transportation	Requires airlines to reimburse passengers for the cost(s) of any transportation to or from the airport that the passenger incurred as a direct result of the passenger's wheelchair or scooter being delayed by the airline. Airlines may require passengers to submit documentation that substantiates the cost(s), such as receipts or invoices. See § 382.130(c)(5).
Prompt Repair or Replacement of Damaged Wheelchairs or Scooters	Following a wheelchair or scooter mishandling, requires airlines to: (a) Provide the passenger a reasonable timeframe to inspect the wheelchair or scooter and to file a claim with the carrier for the mishandling; (b) Offer the passenger options, on or after March 17, 2025, of: (a) the carrier handling the prompt repair or replacement of the device, with a device of equivalent or greater function and safety, and paying the associated costs; or (b) the passenger arranging for the repair or replacement of the device, with a device of equivalent or greater function and safety, through his or her preferred vendor with the carrier having the responsibility to transport the device to the passenger's preferred vendor and to pay the vendor directly for the repairs or replacement; and (c) Promptly review claims received within a reasonable time of the repaired wheelchair or scooter being returned to the passenger alleging that the provided repairs were not sufficient. See § 382.130(d). Clarifies that the Montreal Convention will apply for wheelchair or scooter mishandlings on international flights. See § 382.130(f).
Loaner Wheelchair or Scooter Accommodations	Requires airlines to provide and pay for loaner wheelchairs or scooters while individuals with disabilities are waiting on returns, repairs, or replacements for their mishandled devices. See § 382.130(e).

	Requires airlines to consult with the individual receiving the loaner wheelchair or scooter to ensure that the loaner wheelchair or scooter fits the passenger's functional needs, as much as possible, and safety-related needs. See § 382.130(e). If the loaner wheelchair or scooter offered by the airline does not meet the passenger's functional and safety-related needs as well as the passenger's existing device, requires the airline to allow the passenger to find and secure an alternative loaner wheelchair or scooter that is better than the one offered. Airlines must reimburse the passenger for the cost of that loaner within 30 days of the passenger's request. Airlines may require the passenger to provide documentation substantiating the cost, such as receipts or invoices, to receive the reimbursement. See § 382.130(e).
Reimbursement of Fare Difference	Requires airlines to reimburse the difference between the fare on a flight a passenger who uses a wheelchair or scooter took and the fare on a flight that the wheelchair or scooter user would have taken if his or her wheelchair or scooter had been able to fit in the cabin or cargo compartment of the aircraft. Fare difference requirement is limited to flights that occur on the same day, on the same airline, and between the same origin and destination. Requires airlines to disclose on their websites the documentation needed to support a reimbursement claim. See § 382.132. Compliance date is March 17, 2025.
Rebooking Requirements	Requires airlines to offer to disembark passengers and rebook them on the next available flight of the same carrier or a partner carrier at no additional cost when passengers' wheelchairs or scooters are not loaded on their scheduled flights, for whatever reason. See § 382.125(f)(2). Requires airlines to also offer free rebooking on the next available flight of the same carrier or a partner carrier when the airline becomes aware that a passenger's personal wheelchair or scooter does not fit on the passenger's scheduled flight. See § 382.125(f)(2).
Seating Accommodations at the Airport	Requires airlines to establish and provide, after consultation with disability rights organizations, safe and adequate seating accommodation(s) to be used by a person with a disability when waiting for a delayed personal wheelchair or scooter or waiting for a loaner wheelchair or scooter after a passenger's wheelchair or scooter is mishandled by the carrier and cannot be promptly returned. See § 382.130(c)(4). Compliance date is December 17, 2025.

Enhanced Training for Certain Airline Personnel and Contractors	Requires annual training, including hands-on training, of airline employees and contractors who physically assist passengers with mobility disabilities or handle passengers' wheelchairs or scooters. As part of the required training, employees and contractors must be able to successfully demonstrate their knowledge (e.g., competency assessments or certification exams). See § 382.141(a). Defines *hands-on training* to mean in-person training that is received by an employee or contractor where the employee or contractor can learn and practice real-life scenarios in a safe and controlled environment without the possibility of real-life consequences to passengers with disabilities and with the use of a suitable life-sized model or equipment, as appropriate. See § 382.3. Requires all airline employees and contractors who provide physical assistance to persons with mobility disabilities or handle the transport of wheelchairs or scooters to be trained as specified in this final rule by June 17, 2026.
New Improved Standards for On-Board Wheelchairs (OBW)	Requires new improved performance standards for OBWs on twin-aisle aircraft and purchases of OBWs for use on aircraft with more than 60 seats after October 2, 2026, consistent with standards for OBWs on single-aisle aircraft with 125 or more seats. See § 382.65(h). Requires all OBWs for use on aircraft with more than 60 seats to meet the Department's new improved standards by October 2, 2031.

E. Costs and Benefits

The final rule will increase access to safe and dignified air travel for individuals with disabilities, particularly individuals who use a wheelchair or scooter. Expected benefits, which are not quantified, include: reducing fatal and non-fatal injuries sustained by individuals with disabilities and reducing embarrassing and demeaning experiences from inadequate assistance. Expected costs to industry, which are also not quantified, may include increasing staffing levels and administrative costs, among other things.

The final rule will also reduce the frequency and severity of mishandled wheelchairs and scooters and the harmful impacts that result from the mishandling of wheelchairs and scooters. The quantified benefits to individuals with disabilities are estimated to be approximately $11.1 million annually (discounted at 2%). The quantified cost to industry of the provisions involving the handling of wheelchairs and scooters, including enhanced training requirements, are estimated to be approximately $14.7 million annually (discounted at 2%).

In addition, the final rule expands the use of OBWs with improved safety and accessibility features. Expected benefits, which are not quantified, include increasing the safety and comfort of individuals with disabilities. The quantified cost to carriers of the enhanced OBW provisions are expected to be approximately $900,000 annually (discounted at 2%).

II. Discussion

A. Assistance to Individuals With Disabilities

1. Safe and Dignified Assistance

The NPRM: In the NPRM, the Department proposed to explicitly include in the rule text that any assistance or accommodation required by the Department's disability regulation must be provided to individuals with disabilities in a safe and dignified manner. The Department also sought comment on whether the terms ''safe'' and ''dignified'' were easily understood by carriers and the public. The Department also asked whether part 382 should include definitions for ''safe'' and ''dignified'' and if so, what should the Department consider when drafting definitions for those terms.

Comments Received: Individuals with disabilities and disability rights organizations generally supported the Department's proposal. At the same time, many disability rights organizations commented that the terms ''safe'' and ''dignified'' are not clearly understood by airlines and public. Most of the disability rights organizations that commented on this issue agreed that part 382 should include a definition for the term ''safe.'' Multiple disability rights organizations, including Paralyzed Veterans of America (PVA),[20] the Christopher and Dana Reeves Foundation, the Amputee Coalition, and the National Multiple Sclerosis Society, stated that ''safe assistance'' be defined as ''free from the risk of bodily injury or

[20] PVA's comment was co-signed by more than fifty other disability rights organizations.

death and the freedom from the risk of loss or damage to any assistive device.'' The United States Gender and Disability Justice Alliance and the Ability Center of Greater Toledo stated that the Department should collaborate and work with the disability community and individuals who use wheelchairs in developing a definition of ''safe.''

However, disability rights organizations split on whether the term ''dignified'' should be defined in part 382. Some disability rights organizations, such as PVA, the Christopher and Dana Reeves Foundation, the National Multiple Sclerosis Society, and the Arc, commented that ''dignified'' should not be defined in part 382. PVA asserted that dignity is not a singular concept, but includes civil rights, human rights, recognition, and non-discrimination, that any definition would fail to capture the breadth of what dignity encompasses, and that specifically defining dignity would only result in narrowing the carrier's obligations and passenger protections.

A number of other disability rights organizations, such as the American Association of People with Disabilities, the Rare Disease Diversity Coalition, the Amputee Coalition, and the United States Gender and Disability Justice Alliance, commented that the Department should define the term ''dignified.'' The Amputee Coalition stated that failing to define dignity, or at the very least provide guidance on what it means to treat someone in a dignified manner, leaves it to case law to determine what dignity is or is not. Disability Rights Maryland commented that the definition of ''dignified'' should include the following: highlighting and respecting the personhood and privacy of passengers with disabilities; listening and following the instructions of passengers with disabilities; and treating passengers' equipment, such as medical equipment, mobility aids, and assistive technology, with the same level of care as the crew would give to passengers. North Dakota Protection & Advocacy Project stated that ''dignified'' could be defined as ''assistance that follows protocols and procedures to ensure that passengers are assisted in a respectful manner that meets their needs in the least intrusive way possible.'' The Rare Disease Diversity Coalition commented that ''dignified'' means: respecting the inherent worth and autonomy of passengers with disabilities throughout their travel experience; providing assistance in a manner that preserves the individual's privacy and independence; communicating, understanding, and responding to the unique needs of passengers with disabilities without condescension or undue attention; and creating an environment where passengers feel respected and valued.

Alternatively, Disability Rights California commented that the phrase ''safe and dignified'' should be a combination definition that includes the following: every human being has the right to be treated humanely, and respectfully, without the risk of harming physical and mental health; airlines must provide equitable, protected, physical and mental wellbeing in all aspects of air travel; and passengers with disabilities should have freedom from uncertainty, instability, or risk of harm to self or property.

A majority of airline industry stakeholders generally supported the Department's proposal. A4A and IATA commented that they agree with the premise that airlines should provide safe and dignified assistance to passengers with disabilities and the general intent and objective of the Department's proposal. However, similar to disability advocates, there is a split amongst the airline industry stakeholders on whether the terms ''safe'' and ''dignified'' should be defined in part 382. A majority of the airline industry stakeholders that commented on this issue, including A4A, IATA, NACA, and RAA, stated that it is not necessary or prudent for the Department to further define what constitutes ''safe'' or ''dignified'' in part 382. NACA explained that given the variability of passengers, their disabilities, and the operating environment, a more prescriptive definition of ''safe and dignified'' would be difficult to preemptively define. A4A and IATA asserted that leaving the definitions open and flexible allows airlines to better accommodate each individual and their unique disability.

A4A and IATA argued further that the Department should explicitly recognize that the requirement for safe and dignified assistance is based on the totality of circumstances. They also commented that the regulation should state that a carrier's refusal to provide assistance because the airline believes such assistance cannot be performed in a safe and dignified manner does not constitute a violation of part 382. They explained that airlines have responsibility for and are the experts in flight safety, including the safety of passengers with disabilities, and therefore, it is an airline's proper safety determination as to whether it can safely carry the passenger and/or their mobility aid. A4A and IATA asserted that passengers do not have the knowledge or expertise to override an airline's safety-based decision and that an airline's determination of appropriate flight safety requirements takes precedence over a passenger's non-expert opinion on such safety requirements. A4A and IATA argued further that an airline's flight safety determination that may prevent a service or accommodation from being provided cannot be considered a failure to provide a service in a dignified manner and should be presumed to be dignified because the airline put the safety of the passenger with disabilities first.

A few airline industry stakeholders, such as Spirit Airlines (Spirit), Allegiant Air (Allegiant), Transportes Aéreos Portugueses, S.A. (TAP) and Neos S.P.A., commented that the Department should define the terms ''safe'' and ''dignified.'' TAP stated that these terms are currently not defined, vague, and could lead to unwarranted liability for airlines. Allegiant asserted that without clearly actionable standards, frontline representatives and customers are placed in an untenable position. Spirit stated that the Department should clarify the term ''dignified'' or remove the term altogether. Neos S.P.A. suggested that ''safe'' should encompass all actions that prevent physical harm to passengers, and ''dignified'' should ensure that interactions respect the individual's autonomy and privacy.

DOT Response: After carefully considering the comments, the Department has decided to explicitly include in the rule text, as proposed, that any assistance or accommodation required by the Department's disability regulation must be provided to individuals with disabilities in a safe and dignified manner. Including this language in part 382 clarifies and emphasizes the importance of passengers with disabilities receiving assistance in a safe and dignified manner.

In addition, the Department has determined that it is appropriate to provide definitions of ''safe'' and ''dignified'' in part 382. We agree with the commenters that stated that these terms may not be clearly understood by airlines and public and that providing definitions in part 382 will help passengers with disabilities to better understand their rights and airlines to better understand their obligation to passengers with disabilities. This final rule defines ''safe'' as assistance provided to individuals with disabilities that does not put them at heightened risk of bodily injury, which may include loss or damage to wheelchairs and other assistive devices that result in bodily

injury. In other words, disability-related assistance would be considered unsafe, and therefore a violation of part 382 and the ACAA, if the assistance is provided in a manner that increases the likelihood of bodily injury to the passenger with a disability. It would also be considered unsafe if a passenger with a disability experiences bodily injury due to the airline losing or damaging the passenger's wheelchair or other assistive device. For example, an airline is providing unsafe assistance if an airline returns a damaged wheelchair and the wheelchair malfunctions and as a result the passenger is injured.[21] The Department notes that airlines are already required to inform passengers with a disability of the right to contact a CRO and how to contact a CRO if they complain or raise a concern with airline personnel about disability accommodations or services and the airline personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation.[22] This includes complaints or concerns raised about inadequate disability accommodation or service resulting in bodily injury due to improper wheelchair assistance or mishandled wheelchairs. Passengers with disabilities do not need to specifically request a CRO; airlines must provide this information to passengers with disabilities any time they express dissatisfaction with a disability-related service.

This final rule defines ''dignified'' as assistance provided in a manner that respects a passenger's independence, autonomy, and privacy, which includes but is not limited to: airline personnel providing transfer assistance in a manner that ensures the passenger's clothing is not removed; airline personnel not unduly delaying requests for access to a restroom such that the individual soils himself or herself; and, to the maximum extent possible, airline personnel communicating with the individual with a disability rather than his or her companion when the individual with a disability is interacting with them. The Department recognizes that some commenters are concerned that defining ''dignity'' may result in narrowing airlines' obligations and passengers' protections. However, we agree with the commenters that asserted that leaving the term undefined will result in confusion and different interpretation by the public and airlines. The final rule's definition of ''dignity'' highlights that airlines should respect a passenger's independence, autonomy, and privacy, which numerous commenters stated are essential civil and human rights. The Department is also including in the definition of ''dignity'' a few illustrative examples to further assist the public and airlines to understand what it means to assist in a manner that respects a passenger's independence, autonomy, and privacy. The Department notes that dignified assistance is not limited to only these examples and that there are many different situations and scenarios that can qualify as dignified assistance. The definition of dignity is intended to provide a general framework of the meaning of dignity while still leaving the term broad and flexible.

The Department has concerns with A4A and IATA's suggestion that part 382 should be amended to state that a carrier's refusal to assist a person with a disability because the airline believes such assistance cannot be performed in a safe and dignified manner does not constitute a violation of part 382. The inclusion of this type of language in part 382 would make it significantly easier for airlines to deny services and accommodations to any passenger with a disability under the pretext of ''safety.'' It would also make it much harder for the Department to hold airlines accountable for denying services and accommodations to passengers with disabilities. We note further that part 382 already provides instances in which airlines may limit or deny services and accommodations due to safety and security concerns. These safety and security concerns must be reasonable and specific. For example, § 382.19 states that carriers may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government. Airlines may not limit or deny services and accommodations based on a general unsupported belief that the assistance cannot be provided in a safe and dignified manner.

2. Prompt Enplaning, Deplaning, and Connecting Assistance

The NPRM: The NPRM proposed to clarify that all boarding, deplaning, and connecting assistance provided, including moving within the airport terminal (*e.g.,* moving from the terminal entrance through the airport to the gate for a departing flight, or from the gate to the terminal entrance, or moving between gates to make a connection), must be carried out by airlines in a ''prompt'' manner. The Department also proposed to codify its longstanding practice of considering the totality of circumstances when evaluating whether assistance was provided in a prompt manner except when deplaning assistance by aisle chair is needed. In addition, the Department proposed to codify the Department's longstanding interpretation that for deplaning assistance by aisle chair, ''prompt'' means that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers have left the aircraft except where this practice would be inconsistent with Federal regulations or when the passenger requests the wheelchair be returned at a location other than the door of the aircraft. In situations where the exceptions do apply, the Department's proposed definition of prompt requires an airport wheelchair be available as close as possible to the door of the aircraft. The Department noted that airlines are already required to timely return the passenger's personal wheelchair as close as possible to the door of the aircraft, to the maximum extent possible, so that passengers may use their own equipment except: where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials; or when the passenger requests the wheelchair be returned at a location other than the door of the aircraft.[23]

Comments Received: Disability rights organizations, individuals with disabilities, and airline industry stakeholders generally support the concept that boarding, deplaning, and connecting assistance should be carried out by airlines in a ''prompt'' manner. However, stakeholders who commented on this proposal split on how ''prompt'' should be defined.

With respect to assistance with enplaning, moving through the airport, connecting, and deplaning without an aisle chair, a number of disability rights organizations, such as PVA, the Christopher & Dana Reeve Foundation, and the Arc, supported the Department codifying its longstanding practice of considering the totality of circumstances when evaluating whether assistance was provided in a prompt manner when deplaning assistance by aisle chair is not needed. However, they also believed that the Department must clarify that prompt assistance extends to those who wish to preboard and need aisle chair assistance to do so. PVA stated that passengers who wish to preboard have

[21] See American Airlines, Inc., Order 2013–12–4 (Dec. 6, 2024).

[22] See 14 CFR 382.151(c).

[23] See 14 CFR 382.125(c).

been required to wait at the gate or on the jetbridge while other passengers boarded because the equipment or the proper number of trained attendants were not available. PVA explained further that these passengers were then boarded, transferred, and dropped in front of other passengers. PVA suggested that for enplaning assistance by aisle chair, ''prompt'' should mean that the requested enplaning equipment is in working order and a sufficient number of attendants (*i.e.,* two or more) are available at the time the flight begins the preboarding process.

Several disability rights organizations, such as the Colorado Cross-Disability Coalition, the Ability Center of Greater Toledo, and Disability Rights Maryland, disagreed with the Department's proposal to consider ''the totality of the circumstances'' when evaluating whether assistance was provided in a prompt manner and asserted that the Department should establish specific timelines in which assistance should be provided to passengers with disabilities. Disability Rights Maryland commented that the ''totality of the circumstances'' standard is too vague and makes it difficult to enforce the regulations when a passenger is harmed by an airline. Indiana Disability Rights stated that airlines will use the ''totality of the circumstances'' standard as a broad loophole to avoid providing prompt assistance. Colorado Cross-Disability Coalition and Disability Rights Maryland commented that assistance with moving from terminal entrance through airport should be available within 5 minutes of request, if pre-arranged, and within 15 minutes, if not pre-arranged, assistance to make a connection should be available within 10 minutes of landing or more quickly if there is a tight connection or late arrival of the first plane, and assistance with deplaning should be available immediately after the last person without a disability has exited, meaning the aisle chair and staff are waiting and the personal wheelchair is at the door without damage. American Association of People with Disabilities (AAPD) stated that ''prompt'' should be defined as airline or third-party contractors who assist passengers who use wheelchairs must be available to assist said passengers within 15 minutes of check-in at the ticket counter.

All the airline industry stakeholders who commented on this issue supported the Department codifying its longstanding practice of considering the totality of circumstances when evaluating whether assistance was provided in a prompt manner. A4A and IATA pointed out that the Department's ACAA Advisory Committee, which included experts selected from the disability community and industry stakeholders, recommended that the Department continue to use the totality of the circumstances standard to determine if enplaning, deplaning, and connecting assistance is prompt.[24] A4A and IATA strongly urged the Department to give significant weight to the Advisory Committee's recommendation. In addition, the International Airlines Group (IAG) stated that there are many factors beyond the control of the airline which can impact the provision of this assistance including late notification of a change in parking stand by the airport operator, mass disruption events affecting a whole airport as well as high levels of un-notified requests for assistance by customers. A4A, IATA, and NACA explained further that air transportation occurs in a complex environment in which airlines face significant operational and technical challenges, that this environment can make it extremely difficult to meet specific time standards, and that it would be patently unfair to hold the airline liable for failing to meet a specific time standard when the cause is beyond the airline's control.

With respect to deplaning assistance by aisle chair, several disability rights organizations, such as PVA, the Christopher & Dana Reeve Foundation, and the Arc, generally agreed with the Department's proposal that ''prompt'' should mean that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers have left the aircraft. However, they suggested that the Department should specifically require airlines to have at least two trained employees or contractors available to provide transfer assistance. A few disability rights organizations disagreed with the Department's proposed definition of ''prompt'' for deplaning assistance by aisle chair. Disability Rights Maryland commented that personal and boarding chairs should be available as soon as the first passengers are exiting the plane and that passengers who use aisle chairs should be asked whether they prefer to exit the plane first or last. Additionally, Fat Legal Advocacy, Rights, and Education commented that passengers with disabilities should be able to deplane in row order in the same way that able-bodied passengers deplane.

Several airline industry stakeholders, such as Allegiant, IAG, TAP, Neos S.P.A, and Japan Airlines, supported the Department's proposal that ''prompt'' for deplaning assistance by aisle chair means that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers have left the aircraft. However, other airline industry stakeholders, such as A4A, IATA, and NACA, asserted the proposed meaning of ''prompt'' for deplaning assistance by aisle chair should only apply to instances in which passengers have given advance notice to airlines that they need deplaning assistance by aisle chair. NACA stated that an airline cannot be expected to have personnel and equipment positioned in accordance with the proposed standard if a passenger does not inform the airline that they need deplaning assistance by aisle chair. A4A and IATA suggested that the regulatory text should be revised to state the following: ''Prompt assistance for a person who uses a boarding chair (*i.e.,* aisle chair) in deplaning means personnel and boarding chair must be available to deplane the passenger, who has given advance notice of such need consistent with applicable regulation or no later than boarding the aircraft, when the last passenger who did not request deplaning assistance departs the aircraft.'' A4A and IATA asserted that if the Department does not incorporate the language related to passenger advance notification, then airlines would be in the difficult and costly position of pre-staging personnel and equipment at every flight they operate and for multiple passengers onboard the aircraft, often with no need or purpose and at an increased indirect cost to all customers, including passengers with disabilities who do not require such services.

In addition, A4A and IATA disagreed with the Department's proposal that ''prompt'' for deplaning assistance by aisle chair also means that the passenger's personal wheelchair must be ready and available as close as possible to the door of the aircraft, to the maximum extent possible. They asserted that this proposal improperly prioritizes rapid handling of personal mobility aids for immediate availability at the aircraft cabin door over ensuring proper handling of the mobility aid to prevent damage and avoid injury of airline employees. They further argued that this proposal does not consider real and unavoidable scenarios that prevent or significantly impede compliance.

DOT Response: The Department has decided to codify as proposed its

[24] ''Final Report: Air Carrier Access Act Committee Recommendation'' (February 4, 2022), available at *https://www.regulations.gov/document/DOT-OST-2018-0204-0040.*

practice of considering the ''totality of circumstances'' when evaluating whether assistance, except for deplaning assistance by aisle chair, was provided in a prompt manner. Requiring assistance to be provided within a specific time frame, as suggested by some commenters, rather than having a more general requirement for promptness based on the totality of circumstances, is impractical given the wide variety of factors that could affect when the assistance is provided such as the number of assistance requests for a given flight, the airport layout, and whether advance notice was provided to the airline by the passenger. By using the ''totality of circumstances'' standard to determine if the assistance is prompt, the Department is imposing a reasonable performance standard on carriers without creating unnecessarily rigid timing requirements which, in some situations, carriers operating in the best of faith are unable to meet. The Department also notes that the throughout the years, the use of this standard has proven to be sensible and workable; it has supported the goals of ensuring timely assistance for passengers with disabilities while also providing airlines flexibility given the different factors and circumstances that may impact assistance. Additionally, as we noted in the NPRM, the ACAA Advisory Committee which included disability rights advocates, airlines, and interested parties recommended that the Department continue to use the totality of the circumstances standard to determine if enplaning, deplaning, and connecting assistance is prompt.[25]

The Department is not adopting a separate definition of ''prompt'' for preboarding with an aisle chair, as suggested by PVA and other disability rights organizations, because part 382 already requires airlines to provide prompt enplaning assistance to passengers with disabilities upon request. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs (*i.e.,* aisle chairs), and/or on-board wheelchairs, and ramps or mechanical lifts.[26] Furthermore, airlines are already required to offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board and to permit these passengers to board the plane before all other passengers, including first class passengers, elite-level passengers, members of the military, passengers with small children, etc.[27] This means that when a passenger who needs enplaning assistance requests preboarding, the airline must have the proper equipment and an adequate number of personnel prepared to assist the passenger onto the aircraft when preboarding begins, and the enplaning assistance must be provided before all other passengers begin boarding the flight.

With respect to deplaning assistance by aisle chair, the Department is codifying its longstanding interpretation that ''prompt'' means that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers who did not request deplaning assistance have left the aircraft. To be prompt, the passenger's personal wheelchair must also be ready and available as close as possible to the door of the aircraft, to the maximum extent possible, except where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials or when the passenger requests the wheelchair be returned at a location other than the door of the aircraft. This is consistent with the existing requirement in 14 CFR 382.125(c) for airlines to timely return the passenger's personal wheelchair as close as possible to the door of the aircraft, to the maximum extent possible, so that passengers may use their own equipment except: where this practice would be inconsistent with Federal regulations governing security or the transportation of hazardous materials or when the passenger requests the wheelchair be returned at a location other than the door of the aircraft. The Department believes this standard for determining ''prompt'' deplaning assistance by aisle chair balances the safety and dignity of passengers who require deplaning assistance and airlines' operational considerations. We also note that the ACAA Advisory Committee recommended that the Department codify this timeliness standard,[28] which was described in the Preamble of the 2008 final rule.[29]

The Department is not adopting in this final rule the suggestion by airline associations to amend the regulation to require prompt deplaning by aisle chair only for those passengers who provide advance notice to airlines. The Department disagrees with comments that if passengers do not inform airlines that they need deplaning assistance by aisle chair, then airlines cannot have necessary personnel and equipment positioned to provide the assistance. Practically speaking, in nearly all situations, a passenger who requires deplaning by aisle chair will have received enplaning assistance with an aisle chair at the origination airport. Therefore, the airline will have known well before the flight arrives at the destination airport that there is a passenger onboard the flight that requires deplaning assistance by aisle chair, and the airline should be able to deploy the necessary equipment and personnel to meet that flight when it arrives at its destination.

The Department also disagrees with A4A's and IATA's comment that ''prompt'' for deplaning assistance by aisle chair should not include the requirement that the passenger's personal wheelchair be ready and available as close as possible to the door of the aircraft, to the maximum extent possible. As we explained in the NPRM, the inclusion of ''to the maximum extent possible'' is intended to address situations where it may not be possible to bring passengers' wheelchairs to the door of the aircraft. For example, depending on the connection time and the airport layout, it may be necessary to transfer the wheelchair directly to the next flight. However, this does not mean that airlines can simply decide that it is too much work to provide passengers their own wheelchairs at the gate. The Department believes that this requirement, as written, maximizes passengers' autonomy, safety, and independence while also providing sufficient flexibility to airlines.

B. Handling Requirements for Assistive Devices

1. Rebuttable Presumption of a Violation

The NPRM: The NPRM proposed to define ''mishandled'' as it relates to wheelchairs or other assistive devices to mean lost, delayed, damaged, or pilfered (*i.e.,* stolen). The NPRM also proposed to clarify that any mishandling of a passenger's checked wheelchair or other assistive device is a *per se*[30] violation of the ACAA. Under the proposal, any checked wheelchair or other assistive device that is lost, delayed, damaged, or pilfered (*i.e.,* stolen) while under the custody and control of an airline would be considered a violation of the ACAA and part 382 regardless of the circumstances surrounding the event. The Department sought comments on whether it is reasonable to consider any

[25] *Id.* at 13.

[26] See 14 CFR 382.95.

[27] See 14 CFR 382.93.

[28] ''Final Report: Air Carrier Access Act Committee Recommendation'' at 13.

[29] *See* 73 FR 27614, 27620 (May 13, 2008).

[30] ''*Per se*'' is a Latin phrase that means ''by itself'' or ''inherently.''

mishandling of a wheelchair or other assistive device a *per se* violation of the ACAA.

Comments Received: With respect to defining the term ''mishandled'' as it relates to wheelchairs or other assistive devices, most disability rights organizations who commented on this issue agree with the Department's proposal to define ''mishandled'' to mean lost, delayed, damaged, or pilfered (*i.e.,* stolen). Some disability rights organizations, such as PVA, the Christopher & Dana Reeve Foundation, and the National Multiple Sclerosis Society, stated that the Department should also make the terms ''lost,'' ''delayed,'' and ''in the custody of the carrier'' consistent with the Department's 2018 technical guidance for reporting mishandled wheelchairs and scooters.[31] Similarly, the airline industry stakeholders that commented on this issue generally support the Department's proposed definition of ''mishandled.'' However, A4A and IATA suggested that mishandled should mean ''lost, delayed, damaged or pilfered by a direct act of the airline or its agents.''

With respect to the proposal to clarify that any mishandling of a passenger's checked wheelchair or other assistive device is a *per se* violation, all disability rights organizations and individuals with disabilities that commented on this issue strongly supported adopting this proposal as written. PVA and the Christopher & Dana Reeve Foundation commented that this clarification is consistent with airlines' current practices because airlines already regularly acknowledge an ACAA violation when a mobility device was not returned to the passenger in the same condition in which it was surrendered. Indiana Disability Rights asserted that the common law principle *res ipsa loquitur*[32] suggests that any mishandling of passengers' assistive devices, while in the airlines' custody, involves negligence by airline staff; but for airline staff negligence, passenger devices would not be mishandled.

All the airline industry stakeholders who commented on this issue strongly oppose the Department's proposal to clarify that any mishandling of a passenger's checked wheelchair or other assistive device is a *per se* violation of the ACAA. NACA commented that imposing strict liability on airlines would be inappropriate for all mobility aid handling circumstances, particularly in those circumstances that are beyond the control of the airline. NACA stated that airlines should not be held liable for mobility aids that were damaged or experiencing operational problems prior to the airline receiving them or for mobility aids that were damaged by ''acts of God.'' NACA further asserted that some passengers will inevitably take advantage of the Department's strict liability and submit claims for damage that occurred before the airline received the mobility aid for stowage.

Avianca Carriers commented that finding a *per se* violation of part 382 without regard to the circumstances surrounding the mishandling or the contributing factors of entities outside of the carrier's control is punitive and, ultimately, will increase costs for passengers and carriers.

Multiple airline industry stakeholders, such as Neos S.P.A., Finnair, and NACA, asserted that the Department should evaluate the mishandlings of passengers' checked wheelchairs or other assistive devices on a case-by-case basis to allow airlines to defend themselves. Finnair explained that imposing a strict liability standard on airlines for the mishandling of wheelchairs and assistive devices seems inequitable as there are many reasons beyond the airline's control that could damage a passenger's wheelchair. Finnair asserted that the Department should consider the facts and circumstances surrounding each situation and weigh the factors that contributed to the mishandling that were within the carrier's control against those that were not.

A4A and IATA asserted that the Department lacks the authority to impose *per se* liability for any mishandling of a passenger checked wheelchair or other assistive devices because it would violate airlines' constitutional due process rights. A4A and IATA stated that the irrebuttable presumption that the airline is responsible for all mishandling of a checked wheelchair or other devices under all circumstances is unfounded and violates the airlines' rights to defend themselves against false allegations or acts that occurred due to events beyond their control. A4A and IATA explained that under both constitutional and Administrative Procedure Act principles, a Federal agency cannot override the fundamental rights of airlines to defend themselves from liability for events and circumstances that are beyond their control. A4A and IATA suggested that the liability for mishandling should be a rebuttable violation of the ACAA and limited to acts that are within the airline's direct control.

DOT Response: The Department has carefully considered this issue and is adopting the proposed definition of ''mishandled'' as it relates to wheelchairs and other assistive devices. The Department agrees with comments suggesting that the definition of ''mishandled'' should be consistent with how the Department defines ''mishandled'' in another aviation regulation related to checked baggage.[33] We believe making the definition consistent with aviation regulation related to checked luggage will reduce confusion since airlines are already applying this definition to checked luggage. As such, we will not include ''by a direct act of the airline or its agents'' in the definition, as suggested by A4A and IATA. We note that further discussion related to custody of wheelchair and other assistive devices can be found below. Accordingly, this final rule defines ''mishandled'' as ''lost, delayed, damaged, or pilfered (*i.e.,* stolen).''.

With respect to the proposal that any mishandling of a passenger's checked wheelchair or other assistive device is a *per se* violation of the ACAA, we find persuasive the comments from airline industry stakeholders that it would be unreasonable to impose on airlines a strict liability standard for wheelchairs or other assistive devices that are not timely returned in the same condition in which they were received. We agree with the comments from airline industry stakeholders that airlines should be provided an opportunity to defend themselves. We also share these commenters' view that airlines should not be found liable for mishandling wheelchairs based on false allegations and in situations where the mobility aids were damaged or experiencing operational problems prior to the airline receiving them. Negligence of the person with a disability due to improper labeling, instructions, or other factors could also be a defense to a presumption of a mishandling violation. However, we do not find persuasive the comments from airline industry stakeholders stating that airlines should not be liable for damages to wheelchairs that are due to ''acts of God'' or a third-party.[34] While ''acts of God'' or actions

[31] See the Bureau of Transportation Statistics (BTS), Office of Airline Information (OAI), Technical Reporting Directive #30—Mishandled Baggage and Wheelchairs and Scooters (October 31, 2018).

[32] ''*Res ipsa loquitur*'' is a Latin phrase that means ''the thing speaks for itself.''

[33] *See* 14 CFR 234.2.

[34] See Refunds and Other Consumer Protections, 89 FR 32760 (Apr. 26, 2024) (Department concluded that ''[b]ag delays due to third-party actions (*e.g.,* security authority or Customs holding bags, airport baggage processing system failure, or recovery bag delays due to carriers' compliance with the positive passenger-bag match requirement) are not

of a third-party are beyond the control of an airline, we believe that imposing responsibility on the airline is proper when the mishandling occurs when the device is in the airline's custody and the mishandling is through no fault of the passenger. The airline in the best position to monitor the handling of wheelchairs and other assistive devices and to adjust practices and procedures to better protect wheelchairs and other assistive devices, and imposing responsibility on the carrier is an effective method to advance the goals of the ACAA and part 382 to reduce mishandlings.

We define ''custody'' as the time period when a passenger has checked a wheelchair, scooter, or other assistive device with a carrier and the carrier has control of a passenger's wheelchair, scooter, or other assistive device. An airline's custody begins when the passenger hands the device to an airline's representative or agent or leaves the wheelchair, scooter, or other assistive device at a location as instructed by the airline. An airline's custody ends when the passenger, or someone acting on behalf of the passenger, or another airline takes physical possession of the wheelchair, scooter, or other assistive device. This is consistent with the Department's policy for reporting mishandled baggage and wheelchairs and scooters.[35]

As suggested by A4A and IATA, the final rule specifies that not timely returning a wheelchair or other assistive device in the condition that it was received is a rebuttable violation of the ACAA. However, the Department is not adopting the suggestion by these airline associations to limit liability to acts that are within the airline's direct control. Under this final rule, the presumption of a mishandling violation cannot be overcome by an airline asserting that the cause of the mishandling is an ''act of God'' or otherwise outside its control if the mishandling occurred while in its custody. The Department believes that this standard ensures that airlines are held accountable for mishandling assistive devices, particularly personal wheelchairs and scooters, which are essential to the user's independence and mobility, while ensuring that airlines can defend themselves.

2. Passenger Notifications

The NPRM: In the NPRM, the Department proposed notification requirements for airlines to ensure that passengers with disabilities are aware of their rights in the event of a mishandling. More specifically, the Department proposed adding a requirement that when carriers mishandle wheelchairs or scooters, they must immediately notify passengers of their rights to: (1) file a claim with the airline; (2) receive a loaner wheelchair from the airline with customizations; (3) choose a preferred vendor, if desired, for repairs or replacement of a damaged device; and (4) to have a CRO available and be provided information on how to contact the CRO.

The Department also sought to mitigate the resulting harms on passengers with disabilities when an airline has failed to transport a wheelchair or scooter on a passenger's flight. It is for this reason that the Department proposed requiring airlines to provide timely notifications to passengers with disabilities when their wheelchairs or scooters have been loaded on and off the cargo compartment of their flights and to immediately notify the passenger upon learning that his or her wheelchair or scooter does not fit on the aircraft. The Department did not propose a particular communication method for the notification(s), leaving the airlines with the flexibility to determine what would work best for them.

In the NPRM, the Department also requested comment on airlines ensuring consumers have accurate and up-to-date information regarding their checked wheelchairs and scooters. The Department asked whether airlines should be required to provide status updates to passengers with disabilities about their checked wheelchairs and scooters (*e.g.,* the stowage location of the passenger's wheelchair or scooter on the flight) and whether the proposed requirements should be extended beyond wheelchairs and scooters to apply to other types of checked assistive devices.

Comments Received: Disability rights organizations agree with the Department's proposal that carriers notify passengers of their rights and options when checked wheelchairs or scooters are mishandled. Some disability rights organizations, such as PVA, the Amputee Coalition, and the National Multiple Sclerosis Society, suggested that the Department should also include requirements that the passenger may file a claim, and carriers must accept a claim, within fifteen days after the passenger's arrival or return of the assistive device, whichever is later. Furthermore, a few disability rights organizations, such as PVA, the Christopher & Dana Reeve Foundation, and the Amputee Coalition, commented that the Department should require airlines to provide an option for a passenger to file a claim in an accessible manner that does not require the passenger to return to the airport.

Disability rights organizations also expressed support for the Department's proposal on required notifications to passengers with disabilities when their wheelchairs or scooters are loaded onto and off their flights. These organizations stated that they believe that passengers with disabilities need to know if, and when, their mobility aids have been loaded and offloaded from aircraft so they can track these devices that are critical to their health and independence. They also stressed that these notifications must be timely and accurate and provided in an accessible format, otherwise the notifications would be useless.

Disability rights organizations had mixed opinions on communication methods for providing the stowage notifications (*e.g.,* via text message, mobile app notification, email, or verbal confirmation). PVA stated that the Department should not give carriers complete autonomy for passenger notifications and that all notifications should occur in the most prompt method that is accessible for the passenger. PVA's comment continued on to state that for loading and offloading of the passenger's mobility device, the carrier should default to a real-time accessible method of communication, such as text messages and updates on the carrier's website or mobile app. Others, including Indiana Disability Rights, recommended that airlines update passengers about the status of their wheelchairs in-person rather than through a mobile app because passengers with disabilities may not have their phones on them or available during boarding and deplaning. Some stated that the notifications should only be done by using the passenger's preferred method of communication.

Disability rights organizations' comments also urged the Department to go further than the requirements of the NPRM's proposal. For example, the Christopher and Dana Reeve Foundation recommended that airlines provide status updates for passengers' wheelchairs and scooters throughout the entire air travel experience. This would include updates each time the status changes, such as during the loading and

permissible grounds for exempting the carriers from the baggage fee refund obligation because the affected bags are under carriers' custody.'')

[35] See the Bureau of Transportation Statistics (BTS), Office of Airline Information (OAI), Technical Reporting Directive #30A—Mishandled Baggage and Wheelchairs and Scooters (December 21, 2018).

offloading for all flight legs and for availability at connections. PVA and Cure SMA noted that stowage notifications and stowage location information need to be provided to relevant airline personnel as well so that they also know where the passenger's wheelchair is at all times.

Airline industry stakeholders had mixed opinions on the NPRM's notification proposals. A4A and IATA commented that they generally agree with the premise that passengers should be notified of a mobility aid mishandling and their rights when it happens. However, they suggested that the Department should clarify that the timing of the notification should occur upon the airline becoming aware of the mishandling. They further suggested that the Department should permit airlines to also include restrictions in the notification, such as limitations of rights when a passenger knowingly agrees to travel separately from their mobility aid because of late gate arrival; limitations of rights for pre-existing damage; and limitations of rights when the mishandling was not caused by an act of the airline.

A4A also generally agreed that passengers should be informed of the stowage status of their wheelchairs and scooters but requested amendments to the Department's proposed rule. A4A provided several scenarios where it believes compliance with the notification requirements would not be possible, such as if the airline is not provided correct contact information for the passenger or the passenger does not have access to electronic communications. A4A commented that they do not believe the Department should impose regulatory liability for these scenarios as it could result in unreasonable actions taken by airlines to avoid regulatory violations. A4A did support the proposal's standard of ''timely'' notifications because this flexibility will avoid imposing unfair liability on airlines for unrealistic timelines. A4A also stated that the Department's proposed regulatory language is redundant and should be limited to notifications when the wheelchair or scooter is ''loaded'' and ''unloaded.'' Southwest Airlines Co. (Southwest) agreed with A4A's stance and asserted that the Department's requirements must account for operational realities, limitations of the airline's ability to communicate with its customers, and different airline business models. Southwest supported a ''prompt'' and ''to the extent possible'' standard for notifications that would allow for flexibility in differing circumstances, avoid imposing unfair regulatory liability, and appropriately set the expectations of passengers with disabilities.

A4A also supported flexibility for airlines regarding the communication method(s) used to provide stowage notifications to passengers. A4A's comment suggests that some airlines will opt to use automated and electronic notifications, and in doing so will need to ensure that their systems, procedures, and training are updated appropriately. As such, A4A recommended that the Department give airlines a minimum of 18 months to implement the notification requirements. Southwest called for even more time for implementation and requested a minimum of 24 months to comply. For passengers who need verbal notifications, A4A stated that such requests should be made in advance or at the airport on the day of travel. Southwest on the other hand stated that verbal notifications could be problematic for the carrier due to its open seating model. Southwest asserted that discreetly informing a customer of the status of their device once onboard the aircraft will be a concern and likely impossible without at least announcing the customer's name in order to determine where they are on the aircraft.

NACA had a slightly different position. NACA stated that there is no added benefit to passengers with disabilities by knowing exactly when their wheelchairs or scooters are loaded and unloaded. NACA commented that the absence of a notice that a device was not loaded should be enough for the passenger to know that their mobility aid has been loaded on their flight. NACA asserted that costs for technology purchases and implementation and handler time will outweigh any related benefits to passengers with disabilities and will unduly burden the ultra low-cost carriers (ULCCs). Allegiant and Spirit provided similar comments and view this as an unnecessary additional requirement that will disproportionately impact smaller carriers that do not utilize sophisticated baggage tracking systems with a customer interface. Allegiant stated that carriers may choose to use in-person verbal notifications for passengers to reduce costs, which could cause embarrassment to these passengers in a public setting. Spirit noted that these notifications may cause more worry and anxiety for travelers because wheelchairs and scooters are typically loaded last.

RAA noted that its fee-for-service carriers do not have the means to directly contact their passengers and passengers would need to be notified by the mainline partners. RAA also stated that automated communications are preferred because it can be the timeliest form of notification and most airlines already utilize technology that tracks checked baggage where passengers can follow the location.

Foreign airlines shared similar opposing views as NACA, Allegiant, and Spirit. TAP, Neos S.P.A., Japan Airlines Co., Ltd. (JAL), Finnair OYJ, and Avianca Carriers noted concerns with logistical challenges and high technology development costs associated with compliance with the NPRM's proposed requirement. Avianca Carriers also stated that the Department needs to define what is meant by ''timely'' notifications and that notifications should not be required if providing the notification would delay the aircraft.

Other stakeholders, including Open Doors Organization (Open Doors), were generally supportive of the requirement for airlines to provide stowage notifications to passengers with disabilities when their wheelchairs or scooters are loaded onto and unloaded from their flights. Our Lady of Lourdes Hospitality North American Volunteers suggested that airlines go beyond text notifications by also providing passengers with pictures of their stowed wheelchairs and scooters to further reduce stress for passengers.

As for the proposed requirement for airlines to immediately notify the passenger upon learning that the passenger's wheelchair or scooter does not fit on the aircraft, comments received from airlines, disability rights organizations, and others all generally support this proposal. Some disability rights organizations noted that ideally this notification should be provided to the passenger *before* boarding the aircraft. This way, the passenger could avoid any unnecessary transfers if he or she ultimately decides not to travel without their wheelchair or scooter. A disability organization commenter added that if the notification is provided *after* the passenger has boarded, then he or she must be given the option to exit the plane and have the device returned.

A4A and airline industry stakeholders noted that ''immediate'' notifications may not be realistic or possible in all situations. As such, they suggested using ''prompt'' or other standards that provide more flexibility for the airlines. A4A stated that the notification should be provided no later than when the passenger boards the aircraft or before the aircraft cabin door closes, if the passenger has already boarded the aircraft when the airline attempts to load the wheelchair or scooter in the cargo compartment. Some airlines also

stated that they may choose to give these notifications to passengers verbally, which could alleviate the need for significant technology development.

In response to the question in the NPRM on whether airlines should be required to provide other status updates to passengers with disabilities about their checked wheelchairs or scooters, disability rights organizations had various suggestions. For example, PVA's comment mentioned more frequent updates about the wheelchair's or scooter's location throughout the entire travel experience, status updates when a wheelchair or scooter is damaged, and status updates when a delayed wheelchair or scooter is returned after the passenger's arrival at his or her destination. United Spinal suggested passenger alerts when policy changes are made that affect passenger safety. Liberty Resources asked for notifications to inform passengers with short connections whether their wheelchairs or scooters will be available to them at their connecting gate. North Dakota Protection and Advocacy Project noted that knowing the exact location and status of an assistive device would be beneficial for passengers and carriers as they could be more easily located. Disability rights organizations also generally supported the idea of extending any notification requirements to cover other types of assistive devices beyond wheelchairs and scooters that passengers check in as cargo.

On the other hand, airline industry stakeholders opposed extending the scope of the status notification requirements beyond the NPRM's proposal. A4A noted that the loading and unloading of wheelchairs and scooters is an appropriate scope for passenger notifications. They stated that it would be extremely difficult and unnecessary to provide additional granularity on the loading and unloading process, especially considering variability in airline and aircraft manufacturers' loading and securement procedures, mobility aids, and cargo compartment configurations. A4A stated that this level of detail would also be more confusing for passengers than helpful without additional explanation by personnel with specialized cargo loading expertise. They also contended that the NPRM's question was overly broad and did not allow for meaningful comment on alternative requirements. They also stated that they are unaware of material stowage issues for other assistive devices and noted that airlines generally have little to no information when passengers transport other assistive devices in their checked baggage. RAA, Southwest, and Spirit voiced similar arguments in their comments.

DOT Response: After careful review of the comments on this subject area, the Department is adopting modified notification requirements that airlines must provide to passengers before departure, upon arrival, and in the event a passenger's wheelchair or scooter is mishandled. These notifications must be timely, accurate, and provided in a readily accessible format for passengers with disabilities.

(i) Required Information Prior to Departure

The final rule requires airlines to provide certain notifications prior to departure to passengers who travel with their own wheelchair or scooter. The Department is declining to extend the scope of the pre-departure notification requirements to other types of checked assistive devices. Under this final rule, when passengers check their wheelchairs or scooters, airlines are required to notify passengers of their rights, including their right to file a claim with the airline and to contact a CRO should their wheelchair be mishandled. In addition, prior to the flight's departure, an airline must notify a passenger who uses a wheelchair or scooter whether his or her checked wheelchair or scooter was loaded onto the flight and if the size, weight, or other attribute of the device prevented the carrier from loading the wheelchair or scooter onto the flight. The Department continues to believe that these passenger notifications are most relevant for wheelchairs and scooters, as these larger and heavier devices are more likely to encounter stowage issues with aircraft cargo doors and cargo holds than other types of assistive devices. The Department also acknowledges that there could be significant logistical difficulties for airlines in tracking and updating passengers on other types of assistive devices that are contained in passengers' checked luggage.

The Department is requiring that the notification provided to passengers with disabilities when they check their wheelchair or scooter be in writing. However, we are providing flexibility to airlines on how to notify passengers whether their wheelchairs or scooters have been loaded onto aircraft prior to departure and if it has not been loaded, whether the wheelchair or scooter did not fit in the cargo compartment. The Department received mixed feedback from commenters on preferred communication methods (*e.g.,* text, email, mobile app notification, or verbal confirmation) for stowage notifications. Airline comments suggested that some major airlines will invest time and money into implementing automated tracking and messaging systems. However, airlines with smaller budgets and blueprints may choose to go a different route. By not specifying how the notification is provided to passengers, the Department is enabling airlines to develop practices and procedures that are appropriate for their business models. If an airline offers multiple methods for providing such notifications, then the airline should allow for the passenger to choose his or her preferred method and should honor that choice.

The Department acknowledges the comments from airline industry stakeholders asserting that there are scenarios where airlines should not be held responsible for passengers not being notified as to whether their wheelchairs or scooters have been loaded on and off the cargo compartment of their flights. The Department agrees that, in certain limited circumstances, the lack of passenger notification is not a failure of the airline and is not a violation. For example, the Department would not find a violation if a timely notification was sent but not received because the passenger's cell phone was powered off or the passenger did not provide the airline with accurate contact information. The Department may also not find a violation if the airline provides in-person notifications but was unable locate a passenger in the airport terminal or on the aircraft to provide the notification despite making a good faith effort. The Department's Office of Aviation Consumer Protection will consider these situations on a case-by-case basis considering the totality of the circumstances, like how the Department generally analyzes other disability-related matters to determine if the law was violated.

The Department also agrees with airline industry commenters in that it is not always possible to provide immediate notifications when a passenger's wheelchair or scooter cannot be transported on a flight. Ideally, as noted by some of the comments from disability rights organizations, passengers would be informed that a wheelchair cannot fit in the aircraft cargo due to its size or weight prior to boarding the flight so passengers who use wheelchairs can avoid any unnecessary aisle chair and transfer assistance in enplaning and deplaning the aircraft. However, passengers who use wheelchairs often board a flight before other passengers, and wheelchairs and scooters are often

loaded into the cargo compartment towards the end of the loading process. Loading the wheelchairs at the end makes it easier for airlines to comply with the requirement of 14 CFR 382.125(d), which states that airlines must ensure that passengers' wheelchairs, other mobility aids, and other assistive devices are among the first items retrieved from the baggage compartment. In A4A's comment, the association recommended using the following regulatory language: ''. . . you must promptly notify the impacted passenger no later than when the passenger boards the aircraft or before the aircraft cabin door closes, if the passenger has already boarded the aircraft when the airline attempts to load the wheelchair or scooter in the cargo compartment.'' The Department believes that the standard recommended by A4A strikes an appropriate balance for when individuals with disabilities should be notified because it still provides passengers sufficient time to decide whether to deplane or continue with their original flight without their wheelchair or scooter.

However, the Department is not convinced that implementing the notification requirements regarding the stowage of wheelchair or scooters will take airlines 18 months up to two years as suggested by airline industry commenters. As stated earlier, the final rule provides airlines flexibility regarding the method used to provide notification to passengers. This means that airlines are not required to invest in technology such as a baggage tracking system with a customer interface to comply with the notification requirement though they may choose to do so. Nevertheless, in recognition of the fact that airlines will need some time to develop procedures and technology and train appropriate staff, the Department is providing airlines one year from the date of the final rule's publication in the **Federal Register** to implement the notification requirement relating to stowage of wheelchairs and scooters.

(ii) Required Information Upon Arrival

The final rule requires airlines to notify passengers upon arrival when their wheelchairs or scooters have been unloaded from the aircraft's cargo compartment. The Department is not extending the scope of this notification requirements to other types of checked assistive devices as some commenters have suggested as the Department is not aware of material stowage issues for other assistive devices. Also, the Department is providing flexibility to airlines on how to notify passengers when their wheelchairs or scooters have been unloaded from the aircraft's cargo compartment. This is consistent with the approach that the Department is taking for pre-departure notification requirements.

Under this final rule, the notification provided to passengers regarding the unloading of a wheelchair or scooter from the cargo compartment of the aircraft must be prompt. In this situation, prompt means the notification is provided to the passenger before he or she deplanes the aircraft. The Department made this determination for several reasons. First, in another part of this final rule, the Department is codifying its longstanding interpretation that prompt deplaning assistance for individuals who use wheelchairs includes the passenger's personal wheelchair being ready and available as close as possible to the door of the aircraft except where this practice would be inconsistent with Federal regulations or when the passenger requests the wheelchair be returned at a location other than the door of the aircraft. Often, passengers who use wheelchairs do not want to deplane the aircraft until their personal wheelchair has been unloaded and they can be assured that it is waiting for them at the door of the aircraft. Second, as mentioned by Liberty Resources, PVA, and others, spending extended periods of time waiting in aisle chairs, airport wheelchairs, or airport seats may be uncomfortable or even harmful to many individuals with customized wheelchairs. Third, the Department already requires airlines to ensure that passengers' wheelchairs, other mobility aids, and other assistive devices are among the first items retrieved from the baggage compartment and wheelchairs and scooters are often the last items loaded onto the cargo compartment so they can quickly be retrieved. We note that, while this rule requires notification of the unloading of wheelchairs or scooters to be provided to passengers while they are still on the aircraft and the failure to provide such notification would subject airlines to administrative penalties, other Federal law regarding passenger behavior still requires passengers with disabilities to follow crew member instructions, including instructions to disembark an aircraft, even if an airline has failed to provide a required notification.[36] As for the compliance period, the Department is providing airlines one year to implement notification of the unloading of wheelchairs or scooters similar to the implementation period for notification on whether a passenger's wheelchair or scooter has or has not been loaded onto the aircraft. The Department believes that one year strikes a balance between giving airlines time to develop procedures and technology and train appropriate staff and ensuring these vital notifications are provided to passengers with disabilities as soon as possible.

(iii) Required Information After Wheelchairs or Scooters Are Mishandled

The Department is adopting, as proposed, the requirement for airlines, when wheelchair or scooters are mishandled, to notify passengers in writing of their right to: (1) file a claim with the airline, (2) receive a loaner wheelchair from the airline with certain customizations, (3) choose a preferred vendor, if desired, for device repairs or replacement, and (4) have a CRO available and be provided information on how to contact the CRO. The final rule also requires airlines to provide updates to passengers who have filed claims for a delayed wheelchair or scooter when there are changes to the status of the delayed wheelch air or scooter. The Department has decided not to extend these notification requirements to other types of checked assistive devices considering these notifications are generally not relevant or beneficial to those traveling with checked assistive devices that are not wheelchairs or scooters.

Regarding the timing of the notification to passengers of their rights when a wheelchair or scooter is mishandled, the Department agrees with A4A's suggestion that the notification should occur upon the airline becoming aware of the mishandling, which can happen when an airline employee or contractor notices that the wheelchair or assistive device has been mishandled or when the passenger notifies airline personnel that his or her wheelchair or scooter has been mishandled, whichever occurs first. The Department is of the view that an extended implementation period to notify passengers of their rights when a wheelchair or scooter is mishandled is not warranted. However,

[36] Federal law prohibits passengers from interfering with crewmembers in the performance of their duties onboard aircraft and failing to obey crewmembers' directions. See 14 CFR 121.580.

the Department sees benefit in aligning the time allotted for airlines to comply with the requirement to allow passengers to choose a preferred vendor for wheelchair repairs and replacements (discussed below in section II.B(6)) to this notification requirement given airlines would be notifying passengers of this right. For this reason, the Department has decided to provide airlines until March 17, 2025, to comply with this requirement.

As for the status updates to passengers who have filed mishandled wheelchair or scooter claims for delays, the Department is persuaded that status updates are necessary because passengers need transparency and accurate information on their wheelchairs and scooters when they are separated from them. As Cure SMA stated in its comment on the NPRM, ''Given the importance of wheelchairs in maximizing independence and health for people living with [a neuromuscular disease], passengers must receive prompt, frequent notifications on the transport or availability of their devices, if returned after arrival. Having an estimated time of arrival (whether at the airport or another requested location) would provide peace of mind to people living with [a neuromuscular disease] who are separated from their wheelchairs and allow for advance planning.'' The importance of these updates was echoed by several others, including the National Multiple Sclerosis Society, the American Association of People with Disabilities, and the North Dakota Protection and Advocacy Project. Given the importance of these status update notifications for individuals with disabilities, airlines must provide updates whenever there are changes for delayed wheelchairs and scooters, including changes to the estimated time of delivery.

3. Publication of Information Related to Aircraft Cargo Holds

The NPRM: In the NPRM, the Department solicited comment on whether airlines should be required to provide the dimensions of aircraft cargo compartments prior to travel to any passenger who shares that he or she will be traveling with a personal wheelchair or scooter. The Department noted that airlines are already required to notify passengers, on request, of any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability.

Comments Received: Many disability rights organizations who commented on this issue, including AARP, Cure SMA, and Muscular Dystrophy Association (MDA), stated that airlines should be required to disclose cargo dimensions (including the door) upfront for flights so that passengers can determine whether their wheelchairs will fit and can plan accordingly before travel. AARP asserted that airlines should be required to publish in a prominent and easily accessible place on their public website any size restrictions that could cause a wheelchair not to fit on the plane. North Dakota Protection and Advocacy Project suggested that a possible solution would be for passengers to provide information about their assistive devices when booking flights, so the carrier can independently determine if adequate space is available to transport devices. Disability Rights Maryland stated that airlines should be required to provide cargo dimensions on any web page where passengers can book tickets, or when a passenger books a flight over the telephone.

While A4A did not object to the intent of providing information about aircraft cargo dimensions, it argued that the Department must follow a notice-and-comment rulemaking process to fully examine scope, costs, benefits, and limitations of such notifications. Southwest stated that the company already provides information to passengers regarding the dimensions of aircraft cargo bins and openings on its website, giving them the opportunity to make an informed decision prior to arriving at the airport. Allegiant endorsed ensuring passengers are made aware of cargo limitations prior to the loading stage.

Other stakeholder commenters, including Open Doors, mostly supported a requirement for airlines to provide dimensions of their cargo bins and cargo hold doors to passengers traveling with larger wheelchairs or scooters that could be subject to stowage issues.

DOT Response: Section 544(a) of the 2024 FAA Act directs the Department to require air carriers to publish in a prominent and easily accessible place on the carrier's public website information describing the dimensions and characteristics of the cargo holds of all aircraft types operated by the carrier. Section 544(a) further states that this information must include the dimensions of the cargo hold entry and allowable type of cargo and that air carriers are allowed to protect the confidentiality of any trade secret or proprietary information, as appropriate.

In this final rule, the Department is codifying section 544(a) of the 2024 FAA Act. Airlines are required to publish in a prominent and easily accessible place on the public website of the carrier information describing the relevant dimensions and other characteristics of the cargo holds of all aircraft types operated by the air carrier, including the dimensions of the cargo hold entry, that would limit the size, weight, and allowable type of cargo. Commenters have largely supported airlines disclosing cargo dimensions to enable passengers to determine whether their wheelchairs will fit on aircraft. The Department does not believe that compliance with this aspect of the final rule will require much time or effort by the airlines. The requirement simply calls for airlines to publish data and information on their websites regarding the cargo compartments of the aircraft that they operate, and some airlines indicated that they already post this information on their public-facing websites. This important information will allow for passengers with disabilities to better assess whether their wheelchairs or scooters can be accommodated when searching for and booking flights, which in turn will prevent passengers with disabilities from being turned away at the airport on their day of travel and experiencing significant life disruptions.

4. Return of Delayed Wheelchairs and Scooters

The NPRM: The Department proposed that when an airline delays the return of a passenger's wheelchair or scooter, the airline would be required to transport the delayed device to the passenger's final destination within twenty-four (24) hours of the passenger's arrival at that destination by whatever means possible and to pay the associated cost. The Department explained that the 24-hour requirement was meant to strike a balance between the time required for logistical coordination by airlines and the need for passengers with disabilities to have their wheelchairs and scooters returned to them as promptly as possible. The Department also explained that ''by whatever means possible'' could include the carrier seeking out other commercial passenger flights or freight flights that could accommodate the device and other ground shipping options that would result in prompt delivery to the passenger. In addition, under the NPRM's proposal, the carrier would have to provide the passenger the choice of either (1) picking up the wheelchair or scooter at their final destination airport or (2) having the wheelchair or scooter delivered by the airline to another location, such as the passenger's home or hotel, based on a reasonable request. We stated that we would

consider the wheelchair or scooter to be provided to the passenger (1) when the wheelchair or scooter has arrived at the destination airport, is available for pickup, and the carrier has provided notice to the passenger of the location and availability of the wheelchair or scooter for pickup; or (2) when the wheelchair or scooter is transported to the location requested by the passenger, regardless of whether the passenger is present to take possession of the wheelchair or scooter.

Comments Received: The Department received many comments on its proposed requirement for the prompt return of delayed wheelchairs and scooters by airlines. Feedback was generally mixed, with some comments supporting the NPRM's proposal, some opposing the proposal, and others urging the Department to enhance or expand the proposal.

Disability rights organizations either supported the 24-hour timeline for returning wheelchairs and scooters or asked for even stricter standards. AARP asserted that personal wheelchairs are essential to safe mobility for those who use them, and no one should have to wait longer than necessary for their return. Some organizations, such as the United States Gender and Disability Justice Alliance, and some individuals with disabilities believe that 24 hours is still too long to go without their personal wheelchair or scooter. As such, these commenters recommended stricter timelines and modified standards for airlines to follow. For example, Cure SMA suggested implementing a standard that airlines be required to return a misplaced wheelchair on the next available flight, and no later than 24 hours, even if it requires the use of a different carrier.

Disability rights organizations also generally supported giving options to passengers to either pick up their delayed wheelchairs or scooters at their destination airports or have them delivered by the airline to a different location based on a reasonable request made by the passenger. Many reiterated that passengers with disabilities should never be required to travel back to the airport to pick up their delayed wheelchairs or scooters for several reasons, including limited accessible transportation options. There was also one common concern raised regarding when the Department would consider ''delivery'' to be completed by the airline. Specifically, several organizations including PVA and the Amputee Coalition asserted that ''delivery'' of the device should only be considered complete when the passenger, or an authorized party, takes physical possession of the device from the airline. They believed that the airline's regulatory obligations should not terminate until this point because wheelchairs and scooters should not be left at a designated location without acceptance by an authorized individual.

Airline industry stakeholders believed it will be difficult to meet the 24-hour timeline proposed in the NPRM, especially for smaller airlines, remote locations, and global destinations. A4A and domestic airlines argued that even if they have a daily-service schedule to a given location with one daily flight, that flight will likely land 24 hours apart from when the passenger landed, meaning that the airline is automatically non-compliant with the proposed regulation. They added that the proposed 24-hour period doesn't consider the fact that the airline may have to deliver the wheelchair or scooter to another location off the airport requested by the passenger, and in certain markets, airlines may operate less than daily service and alternative transportation by air may be unavailable. As such, they asserted that the regulation would be unfair and unreasonable.

In lieu of the NPRM's proposal, these airline industry stakeholders recommended several different standards that they claim will allow airlines necessary flexibility in returning delayed devices to impacted passengers. Recommended standards greatly varied. A4A suggests 48 hours for delivery to the passenger's destination airport and 72 hours for delivery to a separate final location as requested by the passenger. NACA urged the Department to consider a six-day delivery standard for ULCCs since these carriers will be disproportionately impacted by the requirement because of their flight schedules. Spirit suggested that the 24-hour timeline of the NPRM's proposal should be satisfied if the airline starts the delivery process before the 24-hour period elapses and is completed in a reasonable amount of time.

Foreign airlines called for a separate standard for delayed devices on international flights. IAG requested a minimum of 48 hours. Multiple foreign airlines suggested a more lenient 96-hour standard that aligns with the regulatory approach taken by Canada. On the other hand, IATA indicated that it does not want any sort of set time standard and instead suggested that foreign airlines should be required to demonstrate that they made best efforts to deliver the delayed wheelchair or scooter in a timely manner.

Airline industry stakeholders also argued that they should not be held liable for delays and extended delays caused by circumstances outside of the airlines' control. Examples provided by A4A and IATA included: late arrival at the passenger's gate that does not give airlines adequate time to load the mobility aid safely; weather or delays caused by the Department's own air traffic control decision; and when a passenger knowingly elects to have a short connection time and has been notified that such time is inadequate for the unloading, transfer, and loading of the mobility aid. Some also took issue with the NPRM's requirement that airlines deliver delayed wheelchairs and scooters to passengers ''by whatever means possible.'' A4A claimed that the requirement lacks consideration of safety and dignity, putting airlines in an unfair situation, conflicts with the idea of passengers making ''reasonable requests'' for delivery, and fails to consider the lead-time that it will take airlines to arrange for safe transport. A4A also claimed that if there are no safe transportation options available or even possible, then the airline cannot be held liable for the delivery to the passenger's requested location. RAA shared the same concerns as A4A. A4A asserted that this could include situations when the only available transport is by off-road vehicle where navigating rough terrain may result in damage to the device or where passengers on intercontinental sea voyages cannot be reached by any other mode of transport.

Lastly, airline industry stakeholders raised some concerns with the details of the two delivery options for impacted passengers. Specifically, some commenters called for clarity and limitations on what may constitute a ''reasonable request by the passenger.'' A4A and IATA also stated that for delivery to the passenger's destination airport, the airline's obligation should be considered complete after making a reasonable attempt to notify the passenger that his or her wheelchair or scooter is available for pick up. They stated that airlines should not be kept on the hook longer if the passenger is unavailable to receive notification because of the passenger's own actions or circumstances (*e.g.,* a passenger does not have cell service or has not configured a voicemail box).

DOT Response: After carefully reviewing and considering the comments received, the Department is requiring carriers to transport delayed wheelchairs and scooters to impacted passengers within 24 hours of the passenger's arrival for domestic flights

and short haul international flights (12 hours or less) and within 30 hours of the passenger's arrival for long haul international flights (more than 12 hours). Under both standards, the delivery time period starts when the passenger is given the opportunity to deplane from a flight at the passenger's final destination and the passenger's personal wheelchair does not arrive with the passenger. The delay ends when the passenger either picks up the delayed wheelchair or scooter at his or her destination airport or the delayed wheelchair or scooter is delivered by the carrier to a reasonable location such as the passenger's home or hotel. Under this rule, the passenger chooses whether to pick up the wheelchair or scooter from the airport or to have wheelchair or scooter delivered to a reasonable location like his or her home or hotel. By reasonable location, the Department means a location that is near the passenger's origination or destination airport. Also, to ensure that an airline is aware that a wheelchair has been delayed and knows where to return the wheelchair, an individual with a disability should file a mishandled bag report (MBR) when their wheelchair or scooter is delayed. Through the filing of an MBR, the airline can obtain information such as the passenger's contact information and where the passenger wishes to have the wheelchair or scooter returned.

The final rule requires carriers to carry out their obligation to promptly return delayed wheelchairs or scooters to individuals with disabilities by using whatever means are available to the carriers to transport the delayed wheelchairs or scooters safely. Ideally, the delayed wheelchair or scooter would be transported on the carrier's next available flight if the wheelchair or scooter can safely fit and it would satisfy the timing requirements of the rule. However, if that is not an option carriers must ensure the prompt transport of the delayed wheelchairs or scooters through other ways, including other commercial passenger flights or freight flights that could accommodate the device and/or ground shipping options.

The Department appreciates the disability rights organizations' comments that urge the Department to take a stricter approach than the 24-hour standard proposed in the NPRM for the return of delayed wheelchairs or scooters. We understand that it is incredibly important for these delayed devices to be returned by the airlines as quickly as possible to restore the passenger's health, independence, and mobility. We also recognize the industry comments that note potential difficulties in meeting the proposed standard for smaller airlines, remote locations, and global destinations. However, while it is true that certain carriers may not have a daily flight to a passenger's final destination, the proposed regulation intentionally provided flexibility for airlines to consider alternative options that could be used to transport the wheelchair or scooter to the passenger in a timely manner (*e.g.,* commercial flights on partner and subsidiary airlines and freight flights). For example, airlines could utilize overnight couriers to meet the deadline rather than waiting for their next available flight. For this same reason, the Department does not believe that a separate standard is needed for ULCCs even if they have lesser flight frequencies and smaller flight networks compared to the legacy carriers.

We note that under the Department's Final Rule on Refunds and Other Consumer Protections, regardless of size, airlines are required to return a checked delayed bag within 12 hours to passengers who were on domestic flights and within 15 hours to passengers who were on short haul international flights (12 hours or less). For several reasons, in this rule, the Department is instead requiring airlines deliver delayed wheelchairs and scooters within 24 hours to passengers traveling on domestic and short haul international flights. As mentioned in comments, wheelchairs and scooters can be more difficult to ship than regular checked bags and can require careful packing and loading. Wheelchairs and scooters can also be large, weigh several hundred pounds, and contain fragile parts. Additionally, as discussed in the NPRM, a given wheelchair or scooter (unlike a regular checked bag) may not fit on any flight offered by a carrier if that carrier operates a limited fleet of aircraft types. In cases where an airline has transported a passenger without his or her wheelchair or scooter, the airline must reunite that passenger with his wheelchair or scooter through any safe means including reaching outside of its own network to secure a transportation option for the wheelchair or scooter. Finally, in this rule, airlines are required to offer delivery of the wheelchair or scooter to a reasonable location requested by the passenger such as the passenger's home or hotel. This additional requirement could add time and effort for airlines when returning these delayed devices.

With respect to returning wheelchairs or scooters for passengers on long haul international flights (more than 12 hours in duration), the Department is requiring carriers to return them to passengers within 30 hours, similar to the timeframe required of carriers returning delayed checked bag. The Department is allowing airlines more time than the proposed 24-hours to return wheelchairs or scooter for passengers on long-haul flights because choices to transport wheelchairs or scooters by other means such as on another carrier's flight or via courier services may be more limited.

The Department is not persuaded by arguments from airline industry stakeholders that they should not have responsibility for delays that are outside their control. As explained in section II(B)(1), we believe that imposing responsibility on airlines is proper when the mishandling occurs when the device is in the carrier's custody and the mishandling is through no fault of the passenger. As we discussed above, airlines are best positioned to monitor and change processes used to transport wheelchairs and scooters while under the airline's custody. Assigning responsibility to the carriers in these circumstances incentivizes them to reduce instances of all types of mishandlings. Even in situations where the passenger's actions contributed to the delay such as when a passenger arrives at a gate late and thus not giving airlines adequate time to load the wheelchair or scooter, while the delay itself may not be deemed a violation, the airline still has a responsibility to return the wheelchair or scooter promptly to the passenger.

Separately, the Department does not agree with airlines' concerns over requiring airlines to use ''whatever means possible'' to deliver the delayed wheelchair or scooter to the passenger. As mentioned in the NPRM, the Department expected for ''whatever means possible'' to include transportation options such as other commercial passenger flights or freight flights that could accommodate the device and other ground shipping options that would result in prompt delivery to the passenger. It was never the Department's intention to require an airline to undertake extreme measures, such as the examples of using an all-terrain vehicle (ATV) to transport a wheelchair to a remote forest in Alaska or flying a scooter via helicopter to a passenger that has left land on an international sea cruise, as suggested by some industry commenters. The Department agrees with A4A's comment in that safety is key for whatever transportation option is ultimately utilized by the airline to deliver the delayed wheelchair or scooter to the

passenger. As such, in the final rule, airlines are required to use ''whatever means are available to safely transport the delayed wheelchair or scooter.''

After considering the comments from disability rights organizations and other stakeholders, the Department has determined that the delay in delivering a wheelchair or scooter to the passenger ends when either (1) when the wheelchair or scooter is picked up by the passenger or another person authorized to act on behalf of the passenger at the destination airport, if the passenger elected for pick up; or (2) when the wheelchair or scooter has been delivered to the passenger or another person authorized to act on behalf of the passenger at a reasonable location requested by the passenger, if the passenger elected for delivery. The Department was persuaded by the many comments that urged DOT to extend airlines' delivery obligations until the point when the passenger takes back physical possession of the wheelchair or scooter from the airline. As PVA noted, these devices are essential to the passenger's health, mobility, safety, and freedom. They can also be very expensive. As such, they should not be left at a designated location without acceptance by an authorized individual. This notion applies regardless of whether the passenger has chosen to pick up the wheelchair or scooter at the airport or to have the device delivered to a separate location. The Department did not find persuasive airlines' comments that a delay should be considered to have ended if an airline makes reasonable attempts to notify passengers of pick-up availability for the delayed wheelchair or scooter.

Given that airlines will need time to establish policies, procedures, and processes and to train staff to carry out the requirement to return delayed wheelchairs and scooters within a specified time, including how to best deliver wheelchairs or scooters to passengers' requested locations, the Department is providing an implementation period of 180 days after the final rule's publication in the **Federal Register**. This 180-day timeframe also aligns with the amount of time that was provided to airlines in the Refund Rule to comply with the requirement to refund fees to passengers for significantly delayed bags.

5. Reimbursement Requirements for Accessible Ground Transportation

The NPRM: The Department sought comments and data in the NPRM regarding costs that an individual with a disability incurs because a wheelchair or scooter is delayed and whether airlines should be responsible for reimbursing individuals for those costs. The Department also asked what documentation individuals should provide to airlines to substantiate these costs and whether there should be a limit to the airlines' liability.

Comments Received: Disability rights organizations urged the Department to adopt a requirement for airlines to reimburse passengers with disabilities for costs associated with delayed wheelchairs. They stated that costs can include transportation to and from the airport, overnight accommodations while waiting for their delayed device, payment of a caregiver, lost wages, cost of a cancelled trip, rental wheelchairs or scooters, and other medical and healthcare expenses. Some of these commenters were fine with limiting passenger reimbursement to a ''reasonable'' amount while others explicitly called for no limitations on the recoverable amount. However, many mentioned that it was important that reimbursement be promptly provided by the airlines. PVA stated that the carrier must provide payment to the passenger within seven business days, similar to the period associated with the Department's recent final rule on air travel consumer refunds.

Airline industry stakeholders mostly oppose any sort of regulatory requirement in this area. However, some airline industry stakeholders, such as Allegiant and Spirit, stated that in practice they already review claims for reimbursement for costs incurred due to the delay of equipment on a case-by-case basis. Airline commenters stated that if a requirement were to move forward, it is important to airlines that any reimbursement be limited and directly connected to a delay caused by the airline. In addition, airlines want passengers to submit receipts to them for such costs and an explanation of why those costs were incurred as a direct result of the delay. A4A and IATA also argued that the Department's NPRM was unclear on what types of costs were being considered as potentially reimbursable and lacked cost-benefit analysis.

DOT Response: After reviewing the comments related to associated costs incurred by passengers with disabilities impacted by wheelchair or scooter delays, the Department is requiring carriers to reimburse passengers with disabilities for the cost(s) of any transportation to or from the airport that the individual incurred as a direct result of the passenger's wheelchair or scooter being delayed by the airline. The comments made clear that these transportation costs are foreseeable consequences that passengers incur almost immediately when their wheelchairs or scooters are delayed. It is the Department's understanding that often passengers with disabilities prearrange for accessible transportation to their homes and hotels upon arrival at the airport, which may then have to be cancelled if their wheelchair is significantly delayed. Passengers with disabilities may have also driven to the airport but may now need to seek out accessible transportation that can safely transport them to their final destinations given their personal wheelchair is not available. Under these circumstances, the passengers will also likely need to return to the airport to pick up their car. The Department views the requirement to reimburse these transportation costs to or from the airport incurred as a direct result of the passenger's wheelchair or scooter being delayed by the airline as a reasonable accommodation that airlines must provide to individuals with disabilities when they have delayed the return of their wheelchairs or scooters.

Under the final rule, airlines are permitted to require passengers to submit documentation that substantiates the cost(s), such as receipts or invoices, to receive the reimbursement from the airline. Reimbursement for these cost(s) must be provided to passengers within 30 days of airlines receiving a request with documentation to support the claim if documentation is required by the airline. The Department believes that granting airlines 30 days to provide reimbursements for transportation costs gives airlines a sufficient amount of time to review and verify passengers' claims and to issue the reimbursements, particularly since some airlines who already provide such reimbursements indicated that that their current process is handled on a case-by-case basis. The Department is not requiring direct payment to vendors to avoid delay in the arrangement of any alternative transportation. Also, the Department expects the cost of ground transportation to be relatively low.

The Department acknowledges that disability advocates and others strongly believe that airlines need to be held liable for all consequential costs that passengers with disabilities incur as a result of delayed wheelchairs or scooters by airlines. The commenters had differing views on whether there needs to be a limit on reimbursement requirements. At the present time, however, the Department is concerned that it does not have sufficient information in this area beyond ground transportation to or from the airport. Consequently, at this time, we are not

imposing a requirement for airlines to reimburse passengers with disabilities for all consequential costs associated with delayed wheelchair or scooters. We will continue to review this issue to determine if future rulemaking proposals may be warranted.

6. Repair or Replacement of Lost or Damaged Wheelchairs or Scooters

The NPRM: In the NPRM, the Department proposed to require airlines to provide two separate options to passengers who file claims with airlines after their personal wheelchairs or scooters have been lost, damaged, or destroyed: (1) passengers can elect for carriers to handle the repair or replacement of the devices; or (2) passengers can elect to use passengers' preferred vendors to repair or replace the device. If passengers select the first option, the Department proposed to require carriers to: repair or replace the devices, depending on the severity of the damage; return the devices to passengers within a reasonable timeframe; and pay the cost of the repairs or replacement directly to the vendor(s). The Department did not define a specific ''reasonable'' timeframe in the NPRM. If passengers select the second option, the Department proposed to require carriers to promptly transport the wheelchairs or scooters to the passengers' preferred vendor, unless the passengers have indicated that they will arrange for the transport themselves. The carrier would be required to cover the cost of this transport and pay the wheelchair vendor directly for the cost of repairs or replacement. The Department sought comments on this point and whether direct billing to the airline may cause any unforeseen issues.

Under both proposed options, if a replacement is necessary due to the severity of the damages or because the device was lost, the replacement device must have equivalent or greater function and safety as the individual's original device.

In addition, in the NPRM, the Department sought comments and data on the following:

- Whether to use detailed timelines rather than a reasonableness standard when airlines handle wheelchair and scooter repairs and replacements;
- Whether the Department should require repairs made only by DME suppliers in the rulemaking;
- Who should be responsible for ultimately determining whether a wheelchair or scooter is ''fixable'';
- Whether an airline's cost for repairs and replacements should be limited to whatever is not paid by the passenger's travel insurance;
- Whether passengers need a ''testing period'' to confirm whether wheelchair or scooter repairs made by the airline are adequate; and
- How ''temporary wheelchair repairs'' offered by airlines at the airport would work in practice.

Comments Received: Disability rights organizations' comments generally supported greater flexibility and options for passengers with disabilities in the repair and replacement process. MDA stated that passengers with disabilities need options, including the ability to choose their own preferred vendor for repairs, when their wheelchair or device is damaged to reduce any safety risks to the passenger and unnecessary delays. The ITEM Coalition commented that while delays may sometimes be due to circumstances beyond the carriers' control, some delays and the associated risks to passengers could be mitigated if passengers have options when their mobility device is damaged or destroyed. AARP supported the proposal's repair and replacement options because many individuals with disabilities have existing relationships with trusted providers and leveraging these existing relationships should lead to more efficient and timely repairs.

However, several disability rights organizations also want additional protections built into the final rule to improve and streamline the current repair and replacement process. For example, MDA asserted that due to a lack of standardization, the repair and replacement process can be time-consuming and frustrating, leading to a loss of independence, medical complications, and additional incurred costs for passengers living with a neuromuscular disorder. Cure SMA stated that the burden is placed solely on the passenger, who must journey to the baggage claim office, wait in line, and report the damage. Cure SMA explained that passengers who do not see damage at the airport because they cannot examine the chair they are sitting in are required to return to the airport to make a claim for repair.

Disability rights organizations offered a variety of suggestions to address some of these noted issues. The most common suggestions included extended filing periods for damage claims (*e.g.,* 14 or 15 days after the device is returned to the passenger), frequent and accurate updates provided to passengers throughout the repair or replacement process, increased airline policy transparency for repairs and replacements, and accessible claim filing options. Cure SMA recommended that passengers be given up to 14 days to file damage claims after their flights land because, for example, electrical damage caused by a pinched wire or water damage that occurred while inflight may not set in for days.

Airline industry stakeholders' comments voiced concerns over the options proposed in the NPRM. A4A stated that as an initial matter, the Department should recognize that when airlines cause a mishandling, they already repair or replace the wheelchair or scooter and work diligently and closely with the passenger to ensure a timely remedy.

Second, A4A claimed that airlines' regulatory liability for repairs and replacements must be limited to circumstances under the airlines' control. They argued that circumstances beyond the airlines' control, such as extreme turbulence that damages a properly secured wheelchair in the cargo compartment, are not an act of discrimination for which the Department can impose strict liability. A4A stated that imposing a requirement to provide repairs and replacements in all circumstances would exceed the Department's authority.

Lastly, A4A noted that even if a passenger has a preferred vendor, airlines may have an equally qualified (or more qualified) vendor that can repair or replace the device in a faster time and in an equal manner, minimizing the costs to the airline. They also asserted that airlines would not be able to vet the passenger's chosen vendor and its work, potentially resulting in replacement of devices whenever they could actually be repaired by the airline's qualified vendor instead. A4A claimed it is unreasonable to require replacement of a device because the passenger's preferred vendor is unqualified to make a repair that others could make. They claimed that airlines' qualified vendors are also best situated to make determinations as to whether damage to a device was caused by handling during air transport or whether it was pre-existing. For these reasons, A4A strongly recommended that the Department allow airlines to select a qualified vendor, and if the airline is unable to contract with one, then the passenger may select the vendor for the repairs or replacement. NACA and RAA shared views similar to A4A.

Foreign airlines and IATA noted that the Montreal Convention already sets relevant limits on their liability for damages resulting from the destruction, loss, damage, or delay of baggage, which includes passengers' checked wheelchairs or scooters. They asserted

that the proposed rule would conflict with these limitations and should not override them. As such, foreign airlines request that the Department include a clear statement in any final rule to clarify that the Montreal Convention applies to international travel.

Other stakeholder comments were minimal on these points. Of note, Open Doors was generally fine with the repair and replacement options for passengers so long as their chosen vendor was within the airline's network or within Global Repair Group's system; however, the passenger should not be able to use a ''friend or buddy'' that does repairs as this could result in fraudulent billing to airlines.

Disability rights organizations also unanimously agreed that wheelchair and scooter repairs and replacements need to be carried out as quickly as possible to reduce any negative impacts on individuals with disabilities, such as reduced independence, safety risks, medical complications, and additional expenses. As such, several organizations objected to the ''reasonable timeframe'' standard set forth in the NPRM when the airline handles the device repair or replacement. These organizations were concerned that the proposed standard is not strong enough to ensure that repairs and replacements are completed promptly and provides airlines with too much deference.

PVA recommended that the Department consider a ''prompt'' standard for airline repairs and replacements, which means that the carrier must ensure that its contractors have a sufficient number of vendors available when needed by the passenger. PVA conceded that a strict and detailed timeline requirement would not be feasible based on the many factors that impact the timeline for a given repair or replacement. On the other hand, some disability rights organizations called for clear and set time frames. The Ability Center of Greater Toledo said that repairs and replacements should be considered ''prompt'' if completed within ten days. United Spinal went even further by offering standards for detailed steps that must be taken by the airline within the first 72 hours following a wheelchair or scooter mishandling.

From the airlines' perspective, A4A and IATA wanted the Department to retain the ''reasonable timeframe'' standard for repairs and replacements. A4A stated that timely and proper repairs and replacements is a shared interest of both passengers and airlines. A4A and IATA stated that the ''reasonable timeframe'' standard is needed because of ''the high variability and complexity of many mobility aids.'' They commented that proper repair or replacement should be prioritized over speed and that the more complex or unique the mobility aid, the longer it legitimately takes to get repaired or replaced properly. A4A and IATA asserted that these timeliness factors are exacerbated by innumerable additional factors, many of which are beyond the control of the airline and despite the significant efforts of the airline to properly handle the mobility aid and remedy the mishandling. A4A and IATA concluded that, depending on the circumstances, it will be impossible and unfair to hold airlines to strict deadlines. All other airline commenters echoed A4A and IATA's comments.

Other stakeholders had mixed opinions on the timing requirements for airline repairs and replacements. Open Doors said that it does not believe stricter, detailed timelines should be used in the regulation given the current conditions of the industry. The American Association for Homecare (AAHomecare) recommended that DOT adopt the proposed ''reasonableness'' standard because of the many potential issues that could impact how quickly a repair or replacement can be carried out but suggested that detailed timelines could be implemented around the initiation process by the airline. On the other hand, the American Occupational Therapy Association (AOTA) called for the Department to establish a timeline for carriers to adhere to when repairing, replacing, or compensating passengers for damaged devices. Also, the National Coalition for Assistive and Rehab Technology (NCART) stated that airlines need to take full responsibility during the process until the damaged equipment is fully repaired and functional for the consumer and to provide full transparency for consumers on tracking the progress of repairs.

Under the second passenger option of the NPRM's proposal, where the passenger uses his or her preferred vendor to carry out the repairs or replacement, the proposal stated that the carrier would be required to pay the wheelchair vendor *directly* for the cost of repairs or replacement within a reasonable timeframe. Disability rights organizations voiced support for such a requirement. These commenters specifically appreciated that this would ease the burden on individuals with disabilities impacted by mishandlings, would not force them to pay the costs upfront out of their own pockets, and would expedite the repair and replacement process. In the event of a dispute, PVA recommended that disputes must be resolved between the carriers and the vendors directly and individuals should not be required to submit additional documents to the carrier.

Airline industry stakeholders generally opposed the direct billing requirement. A4A stated that direct billing should only be required when the vendor is under contract with the airline. A4A asserted that if the vendor is not under contract with the airline, the airline may have inadequate information from the vendor for the airline to ''properly ascribe the billing to a particular claim or satisfy the requirements of the airline's insurance underwriter for sizable claims,'' which could delay the payment and the repair or replacement. A4A also argued that it is reasonable for vendors to bill customers for repairs and replacements, who then can pass the bill on to the airlines, similar to how customers are already reimbursed for hotels, meals, and ground transportation following controllable flight delays. Lastly, A4A argued that the Department should not prescribe the contractual relationship between the involved parties, giving them the flexibility to operate in a way that best suits everyone's needs and preferences.

As for the other questions posed in the NPRM, most commenters agreed that the Department should not address DME supplier requirements in a final rule. Most agreed that wheelchair and scooter repairs and replacements should be handled by qualified and certified technicians. However, they also noted issues with a contracting requirement because ''right-to-repair'' laws fall outside the scope of the rulemaking, DME suppliers may not always be readily available in all parts of the country, and individuals may prefer to work with other local repair shops or mechanics. Open Doors also noted that airlines are already utilizing DME suppliers to handle all repair needs.

The Department also asked about disputes between passengers and airlines over whether a repair or a full wheelchair or scooter replacement is necessary based on the level of damage to the wheelchair or scooter. Disability rights organization showed a strong preference to leave the final determination up to the passenger or the passenger's chosen vendor. They said that if the decision was to be left to the airline, then the passenger must be given an opportunity to appeal the airline's decision if they believe it is incorrect. PVA stated that a passenger should be able to obtain a second opinion and have the opportunity to submit any supporting documentation if he or she believes that repairs would not

return the wheelchair to the same safe condition as before the mishandling. On the other hand, airline industry stakeholders stated that the airlines' vendors are in the best position to make this determination and can also properly assess whether damage to the mobility aid would have been caused by handling during air transport or whether the damage was more likely than not to be pre-existing (*e.g.,* defective part or poor battery life). Spirit asserted that the carrier should be in control of the process because it has the motivation to accurately determine whether a wheelchair or scooter is fixable as it will ultimately impact the cost that the airline pays. Spirit also stated that it would be in a better position to arrange for a prompt assessment of any damage.

As for travel insurance coverage related to lost and damaged wheelchairs and scooters, disability rights organizations opposed any prerequisite or additional burden on individuals with disabilities. PVA stated that most domestic travelers do not purchase travel insurance, and even if they do, the policies may consider mobility aids to be baggage and only subject to limited reimbursement. PVA commented that insurance providers can also require extensive documentation, including local authority reports to substantiate the loss. PVA also stated that some policies totally exclude lost, delayed, and stolen wheelchairs from coverage. Several disability rights organizations echoed similar concerns over requiring individuals with disabilities to purchase and use travel insurance. Airline industry stakeholders, such as A4A and RAA, said that airlines' liability for mishandlings should be reduced by any amount covered by a third-party, such as insurance. They stated that if an airline assumes the full cost in the first instance, it must be able to collect any insurance funds to offset the payment amount by the airline to the passenger.

The Department also asked questions in the NPRM on a ''testing period'' to give individuals with disabilities an opportunity to test their wheelchairs and confirm whether repairs are indeed adequate once the airline has returned the device to them. Disability rights organizations unanimously supported the idea of a testing period. PVA stated that the vendor should require a reasonable timeframe for the passenger to ensure that their mobility device is in the same condition it was prior to being damaged, that any further damage caused by the carrier but discovered later can be covered by the carrier, and that the repair was properly and safely completed. Colorado Cross-Disability Coalition explained that sometimes individuals do not know if a repair is truly completed when delivered and that a repaired wheelchair or scooter may appear working at first but then parts may come loose quickly. Commenters suggested a variety of lengths for the testing period, including 48 hours, 15 days, 28 days, and 30 days from the date the device was returned to the individual. Disability rights organizations believe that if the repair is not adequate, the individual should be able to request prompt service to fix any outstanding defect(s). North Dakota Protection and Advocacy Project explained that problems may not be immediately noticeable to the passenger, problems could arise within a few weeks or at a later date, or repairs may be adequate for only a short period of time. They asserted that the passenger should be able to report problems as they arise and require the carrier to pay for the repair if it is connected to the damage caused by the carrier.

Airline industry stakeholders commented that they generally believe that individuals should have a reasonable opportunity to inspect a repaired wheelchair or scooter upon delivery but also voiced concerns over the idea of a lengthy ''testing period.'' A4A and RAA said that their primary concern is that airlines' liability and responsibility should end once the device has been returned to the passenger because at that point the airline no longer has custody or control over the device. Both claim that airlines would then have no means to prevent further damage or to validate whether the new issues with the device are attributable to the airline's custody. IAG stated that they have seen no trend of customers returning wheelchairs to airlines for additional repairs and thus there is no need for a regulation on a testing period. As for timing, Spirit suggested that a 72-hour testing period would be enough to determine if a repair was properly completed. Allegiant on the other hand requested that the Department not enact a set time frame for a testing period as this could limit the timeliness of resolution for the passenger and create a standard where carriers may be forced to address damage that is incurred after delivery of successfully repaired equipment.

Finally, the NPRM asked about minor ''temporary wheelchair repairs'' that would be sufficient to get the passenger out the door of the airport with their personal wheelchair so that they can continue on with their journey as planned to the maximum extent possible and seek out a ''full repair'' at a later time and date. Disability rights organizations generally think that it would be reasonable for airlines to offer these temporary repairs, either on-site at the airport or through a local vendor. Cure SMA commented that this could be accomplished by airport personnel equipped with basic supplies (*e.g.,* standard tools, zip ties, etc.) or by on-call DME vendors for emergency repairs. Others mentioned that minor repairs could include replacing lost screws, inflating tires, tightening loose bolts, and straightening out a bent component.

Airline industry stakeholders do not think that ''temporary repairs'' should be required under the Department's regulations. Similar to ''testing periods'' following repairs, some airline industry stakeholders expressed concern that wheelchairs or scooters could become further damaged after the airline has provided a minor temporary repair and returned custody to the individual, placing unfair liability on the airlines. Some commenters also mentioned that it is unreasonable and very costly to require airlines to have qualified vendors at every airport they serve that can carry out these temporary repairs at any time. A4A and IATA stated it would be an unreasonable imposition of costs for airlines to hire and have vendors staffed at every airport that they serve in their networks and at all hours, despite the relatively low numbers of damaged mobility aids and low likelihood that temporary repairs would be possible given the high complexity and variability of most mobility aids. A4A also argued that the NPRM did not provide meaningful opportunity for comment because it was too vague and lacked any impact analysis. Spirit did not find the proposal to be unreasonable.

Other stakeholders, including Open Doors, Gillette Children's Specialty Healthcare, and Able Americans of the National Center for Public Policy Research shared similar conflicting views on this topic. Open Doors asserted that it is not reasonable to ask airlines to do any temporary repairs because airlines are not in the business of fixing mobility devices and could never feasibly provide this service and requiring them to provide repairs would open them up to more liability. Open Doors added that requiring airlines to have an onsite vendor do repairs would not be viable economically given the low incidence of damage, even at a large hub airport. However, Gillette Children's Specialty Healthcare and Able Americans of the National Center for Public Policy Research stated that requiring airlines to provide temporary repairs is reasonable.

DOT Response: The Department has decided to adopt the proposed

requirement for airlines to provide repair and replacement options to passengers after passengers' personal wheelchairs or scooters are damaged, destroyed, or lost. In other words, passengers can elect for carriers to handle the repair or replacement of the devices, or passenger can elect to use passengers' preferred vendors to repair or replace the device. Many comments from disability rights organizations and others expressed support for providing passengers these options. The Department was not persuaded by airlines' comments asserting that they already have their own expert vendors that are best suited to meet passengers' needs. Airline commenters and others also did not provide any evidence to support their stated belief that passengers may choose illegitimate or unqualified vendors or that passengers' vendors may significantly increase costs for airlines. The Department also did not receive any evidence demonstrating that passengers and vendors are likely to fraudulently overbill airlines for repairs or replacements, as suggested by Open Doors. Rather, given the importance of having their devices returned to them quickly and in proper condition, we expect that passengers will carefully select vendors that they trust and believe capable of providing quality services to them. The Department continues to be of the view that passengers with disabilities need options and flexibility following wheelchair or scooter mishandlings to ensure that they do not endure unnecessary delays, undesirable repair and replacement processes, and additional resulting costs.

Under this final rule, when passengers elect to use their preferred vendors to repair or replace their wheelchairs or scooters, airlines must promptly transport them to the passengers' preferred vendor, unless the passenger has indicated that he or she will arrange for the transport themselves, and pay the wheelchair vendor directly for the cost of repairs or replacement. If the carrier needs specific information to properly ascribe the billing to a particular claim or satisfy the requirements of the airline's insurance underwriter for sizable claims, the carrier should work with the vendor and the passenger, as needed, to obtain this information. The Department does not expect this requirement to result in significant processing issues based on the feedback received from both airlines and disability rights organizations.

When passengers elect for carriers to handle the repair or replacement of the wheelchairs or scooters, this rule requires airlines to ensure prompt repairs and replacements of the devices. The Department recognizes that for passengers with disabilities, it is crucial that repairs and replacements, when needed, be completed as quickly as possible to prevent serious life disruptions and at times even health-related risks that occur when individuals with disabilities are separated from their personal wheelchairs or scooters for extended periods of time. The Department also recognizes that strict timelines for airlines to repair or replace wheelchairs or scooters are not workable given the many different factors that can impact the time needed for repairs and replacements. Accordingly, the Department is adopting a ''prompt'' standard for repairs and replacements when the passenger elects for the carrier to handle the repair or replacement of the wheelchair or scooter. Airlines should work directly with the passenger to initiate the repair/replacement process as soon as possible once a passenger has filed a claim. Airlines should also remain active and responsive, to the maximum extent possible, once the process has been initiated. The Department intends to look at the totality of the circumstance in determining whether an airline's actions are prompt.

The Department also clarifies that in the event a dispute arises over whether a damaged wheelchair or scooter can be repaired or needs to be fully replaced, a qualified vendor or technician needs to be the one making the final determination. If the passenger has elected for the carrier to handle the repair or replacement process, then the airline's contracted vendor makes the determination. If the passenger has instead elected to use his or her preferred vendor for the repair or replacement process, then that vendor makes this decision.

Regarding filing damage claims with airlines, commenters have persuaded the Department to require airlines to provide passengers a reasonable period to file claims. Comments from disability rights organizations assert that the process for filing damage claims for wheelchairs or scooters with airlines is burdensome, sometimes requiring the individual to journey to the baggage claim office, wait in lengthy lines, and report the damage while still at the airport. In addition, these organizations state that airlines often do not alert passengers when damage has occurred and/or the passenger may not realize that the wheelchair or scooter was damaged until after leaving the airport. Under the final rule, airlines are required to allow passengers a reasonable timeframe to examine their wheelchairs or scooters for damage following flights and to file a claim with the airline (if necessary). Depending on the circumstances, a reasonable timeframe to file a claim could be at least 72 hours after the flight's arrival. Airlines will have the flexibility to develop their own specific policies and practices on this issue.

As for liability limits for mishandlings on international flights, the Department agrees with the foreign airlines who commented that the Department's proposed requirement would be subject to liability limitations for international flights based on the Montreal Convention. The Montreal Convention sets limits on the liability of carriers arising from the destruction, loss, damage, or delay of baggage, including wheelchairs or scooters, during international carriage. Under the Montreal Convention, airlines must pay up to a limit of 1,288 Special Drawing Rights (SDR) [37] for an assistive device that is lost, damaged, or destroyed. The Department has clarified this point in the final rule text to prevent any confusion for industry and for travelers.

The final rule also addresses passenger claims for insufficient repairs or replacement of wheelchairs and scooters by requiring carriers review promptly claims received within a reasonable time of the wheelchair or scooter being returned to the passenger. Most commenters agree that individuals with disabilities should have a reasonable time to inspect and test their repaired wheelchairs or scooters once they've been delivered by the airline. However, there is disagreement on how long this testing period should last. Disability rights organizations want up to a month, while airlines want to limit their liability once they have relinquished custody of the device and fully turned it over to the individual. The Department understands disability rights organizations' concern that an insufficient repair may only be noticed after testing the wheelchair or scooter in a variety of different settings or environments. As FLARE mentioned, repairs may need to be tested both at home and off-road to ensure all functionality has been restored. The

[37] The SDR was created by the International Monetary Fund (IMF) and is defined as ''equivalent to the value of a basket of world currencies. The SDR itself is not a currency but an asset that holders can exchange for currency when needed. The SDR serves as the unit of account of the IMF and other international organizations.'' *See https://www.imf.org/en/About/Factsheets/Sheets/2023/special-drawing-rights-sdr.* As of September 30, 2024, one SDR was roughly equivalent to $1.36 USD in value.

Department also appreciates the airlines' concerns over the possibility that damage, unrelated to the initial mishandling, could occur during this testing period and that they would have no way to control or verify this. The Department believes that this rule strikes the right balance by requiring carriers to promptly review claims received within a reasonable time of the wheelchair/scooter being returned to the passenger and if the repairs are found to be insufficient then promptly repair or replace the device. Airlines have the flexibility to set the reasonable timeframe for accepting claims alleging insufficient repairs but cannot set a timeframe that is less than 72 hours of the passenger's wheelchair or scooter being returned.

The Department is not imposing requirements in this rule in three areas where comments were sought. First, on the issue of whether the Department should require repairs made only by DME suppliers in the rulemaking, this appears to not be a problem. Based on comments received, it seems as if all repairs and replacements by airlines are already being carried out by qualified DME suppliers. Second, on whether an airline's cost for repairs and replacements should be limited to whatever is not paid by the passenger's travel insurance, the Department does not believe there is an issue that needs to be addressed at this time based on the limited comments received and will not take further action on this in the final rule. Finally, regarding temporary wheelchair repairs at airports, while the Department continues to believe that passengers with disabilities could benefit from temporary wheelchair repairs offered by airlines at the airport, we are declining to take any action on this in the final rule at this time. The Department believes that additional data and research on vendor costs, logistical issues, and scope are needed to accurately gauge the potential costs and benefits of such a requirement.

As for A4A and airlines' argument that repair and replacement liability should be limited to mishandlings due to circumstances under the control of the airline, the Department disagrees. As noted in section II (B)(1) and (4), the Department is of the view that imposing responsibility on airlines is proper when the mishandling occurs when the device is in the carrier's custody and the mishandling is through no fault of the passenger. The airline in the best position to monitor the handling of wheelchairs and other assistive device and to adjust practices and procedures to better protect wheelchairs and other assistive devices, and imposing responsibility on carriers is an effective method to advance the goals of the ACAA and part 382 to reduce mishandlings.

The Department notes that it is providing airlines a compliance period of 90 days after the final rule's publication in the **Federal Register** to offer passengers the two repair and replacement options, discussed above. This period should give airlines enough time to determine how to best offer and carry out these options in practice (*e.g.,* how to transport wheelchairs to passengers' vendors and how to coordinate direct payments to vendors). We understand that airlines are already providing repairs and replacements through the airlines' contracted vendors today. All other regulatory requirements set forth in this section become effective 30 days after the rule's publication.

7. Loaner Wheelchair or Scooter Accommodations

The NPRM: In the NPRM, the Department proposed to require airlines to secure and pay for loaner wheelchairs and scooters for passengers with disabilities impacted by airline mishandlings. In doing so, airlines would also be required to consult with the passenger to ensure that the loaner wheelchair or scooter best meets the passenger's physical and functional needs. This would include providing, upon request, functional and safety-related customizations (*e.g.,* changing cushions; adding lumbar support seat attachment; adjusting the headrest, armrest, or footrest) on loaner wheelchairs and scooters, to the maximum extent possible.

The Department then asked a series of related questions on the costs and logistics of such a requirement. The Department also asked whether airlines should be responsible for reimbursing an individual with a disability if he or she incurs additional costs because the loaner wheelchair or scooter provided by the airline restricted his or her mobility or independence.

Comments Received: Disability rights organizations mostly expressed support for a requirement for airlines to provide loaner wheelchairs and reiterated the importance of safety, mobility, and independence for individuals with disabilities. MDA stated that to eliminate health and safety risks to people living with a neuromuscular disorder, loaner wheelchairs must be provided while carriers promptly and expeditiously repair or replace the individual's personal wheelchair or mobility device. The Amputee Coalition asserted that carriers should be required to provide loaner wheelchairs that meet the functional needs of the passenger to the greatest extent possible and work with passengers to determine what customizations work best for them.

Regarding customizations for loaner wheelchairs, some disability rights organizations opined on what they believe to be necessary customization options. For example, Colorado Cross-Disability Coalition suggested that at a minimum an airline should be able to provide a power wheelchair that has sides, a back, charged batteries, and the ability to be programmed to meet the needs of the individual. The loaner company should also be willing to adjust footrests and program and move the joystick as needed. Cure SMA had similar recommendations, calling for Group 3 power wheelchairs with all four functionalities (seat elevator, tilt, recline, foot elevator) and adjustments such as seat pan, back rest, seat cushion, and arm and leg rests. However, PVA commented that it would be impossible to estimate a complete list of customizations because it will vary depending on the individual's disability and their prescriptive mobility device. Some organizations also noted that it may be difficult for airlines and their vendors to locate and fully customize loaner wheelchairs for individuals with disabilities.

Several disability rights organizations also stated that even with certain customizations, loaner wheelchairs will still not be adequate for *all* individuals with disabilities. PVA asserted that for power wheelchair users, loaner wheelchairs will likely not be able to fully provide all the same functional and safety needs as the passenger's customized wheelchair prescribed to treat their health condition. As such, these organizations called for a requirement to offer alternative accommodation options in lieu of airline-provided loaner wheelchairs. PVA stated that carriers should also have the option for the passenger to elect another accommodation that better suits their functional mobility needs and guarantees their safety, with the cost covered by the carrier, if the loaner wheelchair offered is insufficient. MDA stated that carriers should allow for passengers to rent temporary wheelchairs or elect another accommodation that better suits the person's needs. PIDS asserted that if an appropriate loaner mobility aid is not available, then personal assistance services must be readily available and provided by the airlines.

Airline industry stakeholders also voiced support for the NPRM's proposed loaner wheelchair requirement and generally agreed with

the premise. A4A, NACA, and others asserted that airlines already make efforts to work with passengers following airline mishandlings to find and provide loaner wheelchairs that best meet the passengers' personal needs. However, these commenters also strongly noted a need to limit the customization requirements given the complexity and variability of the types of customizations that may be requested by passengers. They asserted that because of this, airlines may not always be able to find an available loaner wheelchair that meets all the passenger's functional and safety-related needs. A4A strongly agreed with the Department's approach of limiting the customization requirement to ''the maximum extent possible'' and asked the Department to not prescribe the types of customizations that are required or the time in which such customizations be completed. Some carriers, including Spirit and Allegiant, suggested addressing this same issue by limiting the requirement to ''reasonable'' customization requests. Foreign carriers, such as Neos S.P.A. and Finnair, also asserted that it will be especially difficult for them to meet the customization requirements given their small presence in the United States. In addition, airline industry stakeholders argued that complying with the proposed requirement could be costly. NACA estimated that the compliance costs for one of its member airlines could be approximately $1 million per year.

Other stakeholder commenters offered mixed feedback on the NPRM's proposal. Open Doors believes that the NPRM's proposals are feasible for airlines and necessary for passenger health and safety. On the other hand, the NCART and AAHomecare mentioned concerns over logistical difficulties. NCART stated that complex rehab technology (CRT) wheelchairs should be offered as loaners but customization levels may not be feasible in terms of cost and timing. NCART noted that it may require more time for temporary replacement equipment to be configured than the actual repair would take. NCART also noted that loaner equipment appropriate to meet the individual user's medical needs will be extremely limited and that CRT suppliers cannot be expected to always have many options on-hand and available for passengers. AAHomecare voiced similar concerns over associated costs, delays in getting the loaner wheelchair to the passenger, and issues with supplier inventory expectations. AAHomecare concluded that while customization for available loaners (if they are available with a local provider) is feasible for more standard wheelchairs, for medically complex consumers the level of customization required may not be possible or feasible from a cost/timing perspective and may take longer than repairing the original equipment.

As for the Department's question on reimbursing passengers for associated costs incurred due to inadequate loaner wheelchairs provided by airlines, disability rights organizations were in favor of adding a requirement on this. PVA stated that airlines must compensate passengers for ''provable direct and consequential costs'' when the provided loaner wheelchair restricts their independence or results in additional medical issues. Disability rights organizations stated that these costs could include medical services and supplies needed to supplement the loaner wheelchair, lost wages due to functional limitations, personal caregiving services (*e.g.,* assistant to help with activities of daily living), meal delivery services, accessible transportation expenses if the individual is not able to use their standard mode(s) of transportation, and other financial burdens while waiting for their wheelchairs to be repaired or replaced. Most disability rights organizations were fine with airlines requiring individuals to submit documentation to them substantiating such costs, such as receipts and invoices. Some were also fine with capping these recoverable costs. PVA and MDA suggested a ''reasonable'' standard for recoverable costs. However, others such as the United States Gender and Disability Justice Alliance and IDR recommended no limit on airlines' liability for reimbursement in these situations.

Airline industry stakeholders strongly oppose the Department adopting a requirement on recoverable costs for various reasons. A4A argues that the Department did not explain in the NPRM what would constitute ''additional'' or ''associated'' costs, that the public was not given a meaningful opportunity to comment on a potential proposal, and that the costs and benefits of such a proposal were not considered. Neos S.P.A. argued that the Department should not regulate this area so airlines have flexibility in determining appropriate reimbursement on a case-by-case basis based on the diverse needs of passengers. Spirit expressed concern that this could open the door for fraud and abuse as individuals could overstate the harms caused by ill-fitting loaner wheelchairs and claims that the Department and airlines would not have a way to determine if the requested costs were appropriate and not excessive.

A4A argued if a requirement were to go forward, any reimbursement of costs must be directly attributable to the difference between the passenger's personal chair and the loaner chair. A4A asserted that ''associated'' costs are vague and will present challenges for airlines regarding validation, potentially leading to issues of unjustified claims or unwarranted liability. Airline commenters also stated that airlines should be able to require documentation from passengers that clearly sets forth these costs.

Other stakeholder commenters generally supported a requirement for airlines to reimburse passengers for costs incurred due to inadequate loaner wheelchairs provided by airlines. These commenters differed on liability limitations though. Open Doors stated that there should be no limit to the airlines' liability, but Gillette Children's Specialty Healthcare supported a limit to ''reasonable'' costs.

DOT Response: The Department has considered the comments received and has decided to adopt a rule requiring carriers to consult with affected passengers on a loaner wheelchair or scooter that best meets the passenger's physical and functional needs, and to pay for that loaner wheelchair or scooter, so passengers are able to safely use the loaner wheelchair or scooter while waiting for their mishandled personal devices to be returned, repaired, or replaced by the carrier. As proposed, carriers are required to provide, upon request, functional and safety-related customizations (*e.g.,* changing cushions; adding lumbar support seat attachment; adjusting the headrest, armrest, or footrest) on loaner wheelchairs and scooters, *to the maximum extent possible.* Under this final rule, if the loaner wheelchair or scooter offered by the carrier does not meet the specific needs of the passenger, then the carrier must alternatively reimburse the passenger for a different loaner wheelchair or scooter that has been found and secured by the passenger and is necessary for the passenger's safety and functionality in lieu of the loaner wheelchair or scooter offered by the airline. Airlines are permitted to require passengers to substantiate the cost to be reimbursed (*e.g.,* by providing a receipt copy).

Generally, the comments received all recognize that loaner wheelchairs and scooters are vital for passengers whose wheelchairs or scooters are delayed, damaged, or lost by airlines and provide

them the ability to continue their normal daily lives, to the maximum extent possible. Airline commenters supported the NPRM's loaner wheelchair proposal and noted that several airlines already take this step in accommodating individuals after wheelchair and scooter mishandlings. The Department agrees and is requiring that loaner wheelchairs or scooters be provided when wheelchairs or scooters are mishandled.

The Department also recognizes the concerns of airlines and representatives of medical equipment suppliers and manufacturers over loaner customizations. The Department believes that finding and securing appropriate loaner wheelchairs and scooters with full customizations may be challenging for passengers that utilize highly complex and personalized powered devices. The Department acknowledged this potential issue in the NPRM and addressed it in the proposed regulatory text by stating that the passenger's functional and safety-related needs must be met ''to the maximum extent possible.'' The Department continues to believe that this standard is appropriate because it emphasizes the importance of loaner device safety and functionality while affording airlines leniency in circumstances that may be impossible or outside of their control. The Department is also declining to define a set list of required customizations as we understand that this may vary greatly from passenger to passenger.

We recognize that airlines cannot control the availability or actions of wheelchair repair vendors and suppliers for loaners; however, following mishandlings, airlines must make best efforts to find and secure an appropriate loaner wheelchair or scooter, even if this involves reaching out to several vendors. This should also be a collaborative process that involves the passenger so the parties can find a mutually-agreeable solution that works best for the passenger's specific needs and circumstances. For example, it could be that a passenger chooses to forgo certain loaner wheelchair customizations offered by the airline if it results in getting the loaner wheelchair to the passenger faster. The passenger's preferences are crucial.

The Department is also persuaded by the comments from disability rights organizations who explained that loaner wheelchairs and scooters offered by airlines are not a uniform solution for all individuals with varying types of disabilities. If a loaner wheelchair or scooter offered by the airline is not going to be as safe and/or functional for an individual with a disability as the passenger's existing wheelchair or scooter, then he or she must be able to seek out reasonable alternative options that work best for them without bearing the cost. Under this rule, the carrier is responsible for the cost of a loaner wheelchair or scooter that a passenger finds that better meets the passenger's safety and functionality needs than the one offered by the carrier. The Department believes this requirement is necessary for passenger safety, dignity, and independence, and has built this into the final rule. However, the Department is declining to extend this requirement to other types of accommodations besides loaner wheelchairs or scooters. Based on the comments received, it is not clear what other accommodations would be sought out by individuals with disabilities in lieu of a loaner wheelchair or scooter. Nor was any information on associated costs provided. As such, the Department is focusing on loaner wheelchairs or scooters. To be reimbursed for the costs of these alternative loaners, airlines are permitted to require passengers to submit receipts, invoices, or similar documentation that proves the passengers' paid costs.

The Department is not requiring direct payment here by the airline to the passenger's chosen loaner vendor for a few reasons. First, we expect that the cost of loaner wheelchairs, on average, to be much less than the cost of repairs or replacements for complex devices. This means that the upfront costs incurred by individuals with disabilities is likely not as substantial. In addition, it is vital that passengers receive their loaners as quickly as possible. The Department does not want to delay this process by having individuals with disabilities wait for airlines to review and complete payment requests. The Department is requiring airlines to reimburse the passengers for the cost of the loaner wheelchair or scooter within 30 days of providing documentation to support claim.

The Department is declining to move forward with a requirement for reimbursement of costs to individuals with disabilities related to inadequate loaner wheelchairs and scooters provided by airlines that restrict mobility or independence. Commenters raised potential consequential costs ranging from meal delivery services up to weeks-worth of lost wages. The Department is unable to accurately analyze the costs and benefits of such a solution at this time without additional data. Instead, the Department has decided to address the root cause of the issue in this final rule: inadequate loaner wheelchairs and scooters. As mentioned above, this rule provides passengers with disabilities with greater flexibility when seeking out appropriate accommodations while waiting for their wheelchairs or scooters to be returned, repaired, or replaced and will not have to bear the cost. We believe that these final rule requirements will substantially mitigate the types of associated costs discussed in disability rights organizations' comments.

C. Reimbursement of Fare Difference and Rebooking

The NPRM: In the NPRM, the Department solicited comment on whether it should require U.S. and foreign air carriers to refund the difference between the fare on a flight taken by a passenger who uses a wheelchair and the fare on a flight that the passenger would have taken if his or her wheelchair had been able to fit in the cabin or cargo compartment of the aircraft. The Department also asked whether airlines should be required to refund the fare difference only if the passenger's preferred flight itinerary that cannot accommodate the wheelchair and the more expensive flight itinerary that can accommodate the wheelchair are on the same airline, have the same origin and destination, are on the same day, and have the same number of legs, stops, and connection points (if applicable). There were also questions in the NPRM on whether airlines should be permitted to require passengers to take certain steps to obtain a refund of the fare difference and what types of proof or documentation passengers who use wheelchairs should be required to submit to airlines when requesting a lower fare or seeking a reimbursement of the fare difference.

Additionally, when examining whether the Department should require carriers to refund the fare difference under these circumstances, the Department solicited comment on airlines' rebooking practices. Specifically, the Department asked whether airlines currently offer individuals with disabilities rebooking on another flight on the same airline at no additional cost when their wheelchairs or scooters cannot be carried on their originally booked flights and whether the Department should impose such a requirement. The Department also referenced a regulation by the Canadian Transportation Agency requiring carriers to advise passengers of alternative trips provided by the same carrier to the same destination and offer booking for no additional cost if a carrier is unable to transport a

passenger's mobility aid device on a flight.

Comments Received: All disability rights organizations and individuals with disabilities that commented on this issue strongly supported requiring U.S. and foreign air carriers to refund the difference between the fare on a flight taken by a passenger who uses a wheelchair and the fare on a flight that the passenger would have taken if his or her wheelchair had been able to fit in the cabin or cargo compartment of the aircraft. Cure SMA stated that passengers with disabilities frequently pay for more expensive flights on larger aircrafts that can accommodate their large power wheelchairs, which makes it very costly for individuals with disabilities to fly. PVA asserted that forcing a passenger to book a more expensive flight imposes an additional charge on the passenger for a service required by the ACAA. The Arc commented that airlines should refund the fare difference when the carrier is unable to transport a passenger with a disability's mobility device to avoid any additional charges to the passenger and to ensure the passenger has the same benefits as passengers without disabilities, *i.e.,* the option to choose a cheaper flight. PVA also recommended that the Department require airlines to prominently display on their websites all policies related to obtaining a refund of the difference between the fare on a flight taken by a passenger who uses a wheelchair and the fare on a flight that the passenger would have taken if his or her wheelchair had been able to fit in the cabin or cargo compartment of the aircraft. PVA stated further that transparency of all policies is essential for travelers with mobility disabilities to be notified of their rights.

Airline industry stakeholders who commented on this issue oppose requiring airlines to refund the difference between the fare on a flight taken by a passenger who uses a wheelchair and the fare on a flight that the passenger would have taken if his or her wheelchair had been able to fit in the cabin or cargo compartment of the aircraft. A4A and IATA commented that while some flights may not be able to accommodate some passengers with disabilities, an airline's operation of those flights does not constitute discrimination on the basis of disability. A4A and IATA explained that airlines provide those flights, including selection of fares and the aircraft being used, based on a myriad of other factors, including demand, frequency, capacity, and other limitations and costs (*e.g.,* fuel, crew, length of route, origin and destination airport costs, etc.), but never based on a passenger's disability. A4A and IATA asserted that regulation of flights and applicable fares falls outside of the Department's limited authority under the ACAA and that the Department's regulation of fares would violate the Congressional deregulation of the airline industry and would also likely violate bilateral air transport agreements that prohibit the regulation of fares and require an open marketplace for air travel.

With respect to the question of whether airlines should be required to refund the fare difference only if the passenger's preferred flight that cannot accommodate the wheelchair and the more expensive flight itinerary that can accommodate the wheelchair are on the same airline, have the same origin and destination, are on the same day, and have the same number of legs, stops, and connection points (if applicable), PVA, the Amputee Coalition, and the Arc stated further that refunds cannot be limited to only when the new flight has the same origin and destination, are on the same day, and have the same number of legs, stops, and connection points. They asserted that the Department must implement broad requirements for refunds of fare differences, such as extending flight options to nearby airports. Disability Rights Maryland commented that a refunds of fare differences should be applied to flights with the same origin and destination region, regardless of additional connecting flights but that when there is no other itinerary that meets the passenger's needs, airlines should be required to provide a refund for the fare difference even when the preferred flight itinerary and more expensive flight itinerary have different dates, number of stops, or connecting points.

A4A and IATA commented further that the airline should be allowed to require documentation of the fare difference and proof of a booking if the Department imposes a requirement to reimburse passengers the fare difference. These airline associations added that unlike full refunds, a requirement to reimburse fare difference the provision of a partial refund requires material efforts by airlines to confirm the prices and difference because it is not a system that can be easily automated, especially with the continued adoption of dynamic fares. Azores Airlines SATA stated that if the Department were to implement such a requirement, the passenger must provide an invoice detailing the transportation of the chairs and routes taken.

PVA, the Amputee Coalition, and the Arc asserted that to avoid fraud, airlines can request reasonable documentation but must not impose unreasonable barriers to obtaining a refund of the fare difference. They suggested that airlines could request the passenger to provide the dimensions of their mobility device and documentation of the fare of the preferred flight they would have booked if their mobility device could be accommodated on that flight. PVA commented further that the type of documentation cannot be limited, for example, by only accepting a screen shot of the fare price. PVA explained that not all passengers book their tickets online or solely on the carrier's website, and the ability to take a screenshot of the fare may not be accessible for the passenger due to their disability or lack of electronic devices with that technology. PVA recommended that passengers should be able to submit any type of documentation to prove the fare rate, *e.g.,* providing the fare rate and the date of their search or call; printed copies of the fare rates; photos of the rates, that are not necessarily screenshots; correspondence with reservation personnel with the fare rate; or any other type of documented evidence showing the rate. PVA also recommended that the Department require airlines to prominently display on their websites all policies related to obtaining a refund of the fare difference. PVA explained that transparency of all policies is essential for travelers with mobility disabilities to be notified of their rights.

In response to the Department's request for comments on airlines' rebooking practices when passengers' wheelchairs or scooters cannot be carried on their originally booked flights, various commenters raised concerns about the lack of travel options for passengers with disabilities in these circumstances. Disability rights organizations urged the Department to strengthen its proposal by requiring airlines to offer alternative travel options to impacted passengers in these situations. Disability Rights New York stated that DOT must create guidelines for airlines to follow when wheelchairs do not fit on the traveler's aircraft. PVA asserted that until aircraft can readily accommodate power wheelchairs and scooters, carriers should be required to provide additional options to passengers. AAPD stated that these options can include deplaning and rebooking on another flight that will accommodate their wheelchair or scooter free of charge or staying on their scheduled flight with the provision of a

loaner wheelchair or scooter at the destination gate. AAPD added that the airline should also transport the passenger's mobility device to his or her destination on the next available flight that can accommodate their device.

Organizations stated that at a bare minimum though, passengers need to be given the opportunity to deplane and cancel their flight if their wheelchairs or scooters do not make it onto their flights. PIDS asserted that if the passenger is informed of the situation after boarding, then they must be given the option to exit the plane and return to their undamaged mobility device. PVA also noted that the organization is unaware of any consistent policies and practices among all carriers in these situations. MDA and the Amputee Coalition reported the same. On the other hand, United States Gender and Disability Justice Alliance asserted that passengers are currently informed by airlines when there is an issue with stowage and are given the option to continue the flight without their wheelchair or stay with their wheelchair.

From the airlines' perspective, RAA commented that when a passenger's wheelchair or scooter does not fit, the airline's customer care personnel work with the passenger to be rebooked on the next available flight on which the wheelchair or scooter would fit. Allegiant noted similar views and stated that its current policy is for a CRO to be contacted for assistance and to consult the passenger regarding possible solutions. Allegiant also stated that these instances are very rare and are more characteristic of regional carriers operating smaller aircraft.

A4A and IATA argued that a requirement to rebook a customer on a flight at a lower fare from an earlier or later flight raises serious concerns about the potential for dishonest behavior, which may rise to the level of fraud. They commented that if the Department implements this requirement, airlines should be permitted to strictly limit and condition the provision of alternative flights, as determined by the airline, but made transparent to the passenger (*e.g.,* the airline can condition that the passenger must accept and fly on the immediately previous or next flight that can accommodate the passenger's wheelchair; the airline can condition that the passenger must takes an alternative flight that minimizes the fare difference; the airline can limit the alternative travel to the same origin and destination, the same day of flight, the same number of legs, stops and connection points, and any other reasonable condition to minimize the costs to the airline, etc.).

DOT Response: After carefully considering the comments, the Department has decided to adopt a final rule requiring airlines to reimburse a passenger who uses a wheelchair or scooter the difference between the fare on a flight taken by the passenger and the fare on a flight that the passenger would have taken if his or her wheelchair had been able to fit in the cabin or cargo compartment of the aircraft. The ACAA provides that airlines may not discriminate against passengers with a disability. Furthermore, 14 CFR 382.11 states that airlines must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation and exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, among other things.[38]

We recognize that in some instances, passengers who use larger wheelchairs or scooters may only be able to select a more expensive flight because a cheaper flight option uses an aircraft that cannot accommodate their wheelchair or scooter. The Department believes that when this occurs, passengers who use larger wheelchairs or scooters are denied a benefit—the lower prices for air fare—that is available to other persons, which is discriminatory. Passengers who use larger wheelchairs or scooters should not have to pay higher prices for air fares only because their wheelchairs or scooters cannot be transported on certain flights. Accordingly, in situations where passengers who use wheelchairs or scooters cannot book their preferred flight because their wheelchairs or scooters cannot fit in the cabin or cargo compartment of the aircraft of their preferred flights, and the passengers must book more expensive flights that can accommodate their wheelchairs or scooters, airlines are required to reimburse them the difference between the more expensive flights the passengers purchased and had to take and the preferred flights that the passengers would have purchased and taken if their wheelchair or scooter had been able to fit. The Department is limiting the requirement to provide a fare reimbursement to flights that occur on the same day, on the same airline, and between the same origin and destination.

In addition, we agree with A4A and IATA that airlines should be allowed to require certain documentation to obtain the fare reimbursement. We also agree with comments from disability rights organizations that the documentation requirement should not impose unreasonable barriers to passengers seeking the fare reimbursement and that airlines should display on their websites policies related to obtaining a refund of the fare difference. Therefore, the final rule permits airlines to require reasonable documentation from the passenger to verify: the dimensions of the passenger's wheelchair or scooter; the cost of the passenger's preferred flight that could not accommodate the passenger's wheelchair or scooter; and the cost of the more expensive flight the passenger purchased and had to take. Under this rule, an airline must provide reimbursements to passengers for fare difference occurring on the types of flights within 30 days of receiving a request and documentation that substantiates the cost(s), if such documentation is required by the airline. In addition, an airline must disclose on their website the documentation the airline requires from the passenger to support a reimbursement claim.

A4A and IATA asserted that the proposed rule would ''likely violate bilateral air transport agreements that prohibit the regulation of fares and require an open marketplace for air travel.'' However, the commenters did not provide a rationale for this assertion, and the Department has been unable to independently identify any potential violation. We also note that no other commenter, including any U.S. air transport partner, submitted a comment making a similar assertion.

The Department believes this rule strikes a balance between providing passengers who use wheelchairs or scooters equal access to lower air fare options and not imposing unduly burdensome requirements on airlines. Providing fare reimbursements is a reasonable accommodation and less burdensome to airlines than only operating aircraft large enough to accommodate larger wheelchairs or scooters or reconfiguring aircraft to have doors and cargo space large enough to fit larger wheelchairs or scooters.

Further, this final rule requires airlines to offer passengers whose wheelchairs or scooters have not been loaded onto their scheduled flights, for whatever reason, an opportunity to disembark the aircraft and the choice of rebooking at no additional cost on the next available flight of the same carrier or on a partner carrier. In addition, airlines must offer free rebooking on the next available flight of the same carrier

[38] *See* 14 CFR 382.11(a)(1) and (3).

or on a partner carrier, if the passenger's wheelchair or scooter can fit on the aircraft, when an airline becomes aware that a passenger's wheelchair or scooter does not fit on the passenger's scheduled flight. We note that an airline may become aware of this issue in advance of travel, such as at the time of flight booking, or not until at the airport on the passenger's day of travel. The rebooking requirement applies in both scenarios, and the airline should reach out to the passenger as early as possible to start the process.

The Department was persuaded by the comments of PVA, AARP, AAPD, and other disability rights organizations that urged the Department to strengthen the proposed rule by requiring airlines to offer passengers with disabilities an option to disembark and rebook at no additional cost when their wheelchairs or scooters are not loaded onto aircraft. This requirement ensures that passengers with disabilities are not left stranded; instead, airlines are required to offer passengers with disabilities with options when their flight plans are disrupted because their wheelchair or scooter is not loaded onto the aircraft, whether the wheelchair or scooter is not loaded because it does not fit in the cargo compartment or for any other reason.

The Department is pleased to hear from some industry commenters that airlines already make best efforts to accommodate the passenger's needs as best as they can in these unfortunate situations. For example, RAA's comment stated that when a passenger's wheelchair or scooter does not fit in the cargo compartment, the airline's customer care personnel work with the passenger to be rebooked on the next available flight on which the wheelchair or scooter would fit. However, disability rights organizations' comments generally stated that they were not aware of any consistent policies and practices among all carriers. The Department believes that passengers with disabilities are going to benefit from this rule because, when a wheelchair or scooter is not loaded onto a passenger's scheduled flight, the rule requires all airlines that fly to, within, or from the U.S. to offer alternative travel options on that airline or its partner airlines' flights where the wheelchair or scooter will fit.

The Department recognizes that some airlines only operate one type of aircraft and may not have partner airlines. This means that if the passenger's device does not fit on the first flight of that carrier, then the carrier will most likely not be able to accommodate the passenger on a different flight operated by that same carrier or a partner carrier. In the rule text, the Department specifies that the rebooking requirements apply if ''such an aircraft is available'' to safely accommodate the passenger's wheelchair or scooter. In these situations where it is not possible to rebook the passenger, the airline is required to offer the passenger the opportunity to deplane the aircraft (if the issue arises at the airport on the passenger's day of travel) and to fully refund the passenger the cost of any unused portion of a ticket and related paid fees for ancillary services (*e.g.,* transport of checked or carry-on baggage, access to in-flight entertainment programs or Wi-Fi, and in-flight beverages and snacks, among other things) if they choose not to travel without their device.

D. Seating Accommodations at the Airport

The NPRM: In the NPRM, when discussing delayed wheelchairs and scooters, the Department specifically requested comment on whether airlines should be required to provide safe and adequate seating options at the airport while passengers wait for their delayed devices or loaner wheelchairs from the airlines. The Department also asked about what types of seating options would be appropriate, the cost, and logistics needed at airports.

Comments Received: The Department received many comments on whether airlines should be required to provide safe and adequate seating options to passengers with disabilities who are waiting on delayed wheelchairs or loaner wheelchairs at the airport following airline mishandlings.

Disability rights organizations strongly supported requiring airlines to provide safe and adequate seating accommodations while waiting at the airport. The Ability Center of Greater Toledo commented, ''Individuals with disabilities, like everyone else, need suitable seating not only for comfort but also to avoid worsening any discomfort or pain. When awaiting a delayed mobility device at an airport, individuals with mobility disabilities may need to sit for an extended period. Therefore, it's crucial for airports to provide designated and adaptive seating options to ensure that passengers with disabilities do not experience additional stress/harm while waiting for their essential equipment.'' [39]

Disability rights organizations offered different suggestions on what could be provided as a safe and adequate seating option for passengers with disabilities. PVA stated that options may need to vary depending on the passenger's disability and the length of the delay. For shorter delays, PVA said that passengers should never be required to deplane the aircraft unless their mobility device is available; however, if they do deplane, then accommodations could include providing a wheelchair that the passenger can independently use; medical seat cushions; or use of an in-airport lounge area or hotel. For longer delays, PVA said that carriers must offer these accommodations and more, such as accessible transportation to the passenger's destination or another location and/or providing a loaner wheelchair. Disability Rights Maryland stated that airlines should have a variety of seating and laying options available, including chairs with adjustable arm, back, and leg rests and a variety of cushioning. On the other hand, Indiana Disability Rights stated that certain individuals may need to be accommodated on a cot or a similar surface, such as a hospital bed or Sleep Number bed.

Commenters from the healthcare sector such as Gillette Children's Specialty Healthcare suggest that a variety of options may need to be available and that medical experts should be consulted on this. Open Doors believes airlines should be required to provide air-filled cushions and memory foam pads, although this will not be a perfect solution for everyone.

Airline industry stakeholders had mixed opinions on the proposed requirement. A4A, IATA, and RAA generally agreed that airlines should provide seating options to passengers with disabilities who are waiting at the airport after their wheelchairs or scooters have been delayed or damaged by airlines. However, they stated that their concern is that airlines cannot be required to have medically tailored seating options for every form of disability and at every airport. RAA claimed that even hospitals are not held to this high of a standard. A4A and IATA also argued that seating within the airport is not always controlled by the airlines and should already meet the requirements of the Americans with Disabilities Act (ADA). Spirit agreed that this seating should be the airports' responsibility rather than the airlines.

DOT Response: The Department has concluded that it is necessary to adopt a requirement for airlines to provide safe and adequate seating accommodations for individuals with disabilities who are waiting for delayed

[39] Comment from The Ability Center of Greater Toledo, *https://www.regulations.gov/comment/DOT-OST-2022-0144-1409.*

wheelchairs or loaner wheelchairs at the airport. Some commenters have noted passengers with disabilities are often left in aisle chairs or airport wheelchairs when waiting for a delayed wheelchair or scooter and that these chairs may be highly inadequate and may cause physical harm to certain passengers if left sitting on them for prolonged periods. At the same time, determining the best type of seating accommodations that would be safe and adequate is not easy to do. Although some disability rights organizations suggested allowing passengers with disabilities to remain in their seats on the aircraft rather than waiting at the airport terminal in an aisle chair or airport wheelchair, this is often not possible because airlines require passengers with disabilities to deplane so they can use the aircraft for other flights. Passengers are required to follow crew member instructions, including instructions to get off an aircraft.[40] Also, as pointed out by airline commenters, it is not realistic to expect airlines to establish and maintain a wide array of types of medical seating that can safely accommodate all types of needs at all the airports they serve. In this rule, rather than specifying the type of seating accommodation(s) that airlines must have, the Department is requiring airlines to consult with disability rights organizations to determine seating accommodations that work for *most* passengers with disabilities. This consultation is crucial because different individuals with disabilities have different seating needs and preferences. The Department acknowledges that the airport layout and other factors may also impact the eventual solution that is deemed appropriate. This consultation requirement is intended to ensure that seating accommodations that airlines establish adequately consider the needs of passengers with disabilities. The Department is providing carriers one year from the date of publication to implement this provision because of the time needed to consult with disability rights organizations, determine the type of seating accommodation that airline will provide, develop processes and procedures, and train staff.

E. Enhanced Training Requirements

The NPRM: In the NPRM, the Department proposed to enhance its existing training requirements for airline employees and contractors who physically assist passengers with mobility disabilities or handle passengers' wheelchairs or scooters. The Department proposed more thorough, frequent, and hands-on training of these employees and contractors.

Specifically, for employees and contractors who provide physical assistance to passengers with mobility-related disabilities, airlines would be required to provide or ensure hands-on training covering safe and dignified physical assistance, including transfers to and from personal or airport wheelchairs, aisle chairs, and aircraft seats; proper lifting techniques to safeguard passengers; how to troubleshoot common challenges when providing physical assistance; and proper use of equipment used to physically assist passengers with disabilities. These personnel would also be required to receive other training covering collecting and sharing of passenger information needed to ensure safe, dignified, and prompt physical assistance, such as Special Service Request (SSR) codes.

For employees and contractors who handle passengers' wheelchairs and other mobility aid devices, airlines would be required to provide or ensure hands-on training covering common types of wheelchairs and other mobility aids and their features; airport and airline equipment used to load and unload wheelchairs and other mobility aids; and methods for safely moving and stowing wheelchairs, including lifting techniques, wheelchair disassembly, reconfiguration, and reassembly, and securement in the cargo compartment of the aircraft. Personnel who handle passengers' wheelchairs and other mobility aid devices would also be required to receive other training covering the collecting and sharing of information regarding a passenger's wheelchair or other mobility aid, including using any airline wheelchair handling form(s) that may exist, to ensure the safe and proper handling of such assistive devices.

Under the NPRM's proposal, ''hands-on training'' was defined as training that is received by an employee or contractor where the employee or contractor performs a task, function, or procedure that would be part of his or her normal duties in a controlled/simulated environment and with the use of a suitable life-sized model or equipment, as appropriate.

As for training frequency, these covered airline employees and contractors would need to be initially trained prior to assuming their duties and then retrained at least once every twelve months after assuming their duties (''refresher training'').

The NPRM also included minor proposed changes to disability-related training requirements for all other personnel (*e.g.,* ticket counter agents and telephone reservation agents). These changes were primarily formatting and language changes, such as clarifying that all other personnel must receive training prior to assuming their duties and at least once every three years thereafter, to promote consistency throughout the regulation without expanding the airlines' obligations. The more substantive change was the proposed requirement for airlines to consult with disabilities rights organizations not only regarding development of their initial training programs, as required today, but also to consult with such organizations when making changes to disability training programs and related policies and procedures that are expected to have a significant impact on assistance provided to individuals with disabilities.

Finally, although not included in NPRM's proposed rule text, the Department solicited comment on whether airlines should be required to designate wheelchair experts and transfer experts who could be consulted should a complex issue or problem arise while handling a passenger's personal wheelchair or while physically assisting a passenger with a disability.

Comments Received: At a high level, disability rights organizations, individuals with disabilities, and other non-airline stakeholders such as healthcare representatives, DME suppliers, and labor unions strongly supported heightened training standards and requirements for airline personnel and contractors. Many stated that training is key to ensuring safe and dignified assistance to individuals with disabilities and proper handling of passengers' wheelchairs and scooters. However, several commenters argued that the Department's proposed training requirements are not strong enough to correct existing training inadequacies and suggested various ways to strengthen DOT's training.

The first major recommendation that disability rights organizations had was for the Department to move away from its existing ''proficiency'' standard for airline training. Disability rights organizations called for a more rigorous approach with detailed training standards, competency tests, and/or certification programs for workers. PVA recommended training to fully educate personnel, which could be accomplished ''by promulgating clear training requirements that provide the competency levels needed to physically

[40] Federal law prohibits passengers from interfering with crewmembers in the performance of their duties onboard aircraft and failing to obey crewmembers' directions. See 14 CFR 121.580.

assist passengers, handle wheelchairs or scooters, or provide relevant assistance for passengers with disabilities in accordance with the personnel's responsibilities.'' PVA further recommended all personnel who provide physical assistance to passengers with disabilities or handle mobility devices ''must be able to successfully demonstrate to a qualified instructor that they are able to safely provide physical assistance in boarding and deplaning.'' PVA asserted that airline personnel must receive more frequent refresher trainings and reassessments to confirm competency levels are maintained. PVA's sentiment was echoed by several others, including Cure SMA, MDA, AARP, and the Christopher and Dana Reeve Foundation. Other disability rights organizations provided slightly different recommendations. For example, the United States Gender and Disability Justice Alliance suggested that training should be an ongoing process, reflecting the evolving understanding of what it means to provide true accessibility. They further suggested that training should be conducted by individuals with disabilities, physical therapists, DME manufacturers, and providers who are familiar with mobility equipment.

Disability rights organizations also recommended that the Department include additional topics to be covered by the enhanced training requirements. The most common suggested topics included effective communication techniques and listening to and respecting passengers' instructions, assisting passengers with disabilities in emergency situations, the Department's Airline Passenger with Disabilities Bill of Rights,[41] and best practices from healthcare and homecare professionals. PVA specifically recommended that effective communications training include requirements for how to take instructions from the caregiver, if the passenger is non-verbal or unable to communicate their needs to the airline.

In contrast, airline industry stakeholders pushed back on the Department's proposal. A4A called for DOT to follow the 2024 FAA Act by implementing an 18-month training cycle, recognize the realities of airlines' operations and personnel needs, and conduct a more fulsome and accurate economic analysis. ULCCs, regional carriers, and foreign airlines asserted that DOT's current regulation is adequate, that airlines require flexibility in developing and implementing personnel training, and that the costs of enhanced training will outweigh any additional benefits. Airline industry stakeholders also commented that the scope of the Department's training proposal is too broad and needs to be specifically tailored to each employee. A4A mentioned that the scope of the enhanced training requirements should be narrowed to only focus on wheelchairs and scooters, which is the focus of the rulemaking, rather than including other mobility aids and assistive devices. NACA agreed with limiting the scope to just wheelchairs and scooters and notes that it would be unrealistic to adequately train employees on a wide variety of other mobility aids.

A4A also argued that training needs to be tailored to the respective duties of each employee and should not be based simply on the employee's job title. A4A provided the following example: ''[A] gate agent that only helps in the disassembly or reassembly of wheelchairs or scooters does not need to be trained in cargo compartment procedures, a highly specialized skillset that includes lift operation, weight and balance considerations, floor weight standards, fire suppression requirements, tie down equipment and procedures, and other factors. Requiring that a gate agent undergo such extensive training on cargo loading and unloading is excessive and unjustified by the costs and may not be permitted under some collective bargaining agreements.'' RAA stated that it is fine with the training topics proposed by the Department but also wants to ensure that airlines can tailor training to employees' specific job duties.

The Department also received feedback on the training frequency proposed in the NPRM. Most disability rights organizations seemed to agree with the Department's proposal, which called for initial training before employees and contractors assume their job duties and then refresher training each year after. PVA noted in its comment that even though disability advocates have argued for recurrent training every six months, they are willing to accept refresher training every twelve months in consideration of the eighteen-month training frequency included in the 2024 FAA Act. A few others recommended that the Department consider tying recurrent training to instances of violations related to safety and mishandlings. For example, Colorado Cross-Disability Coalition and Disability Rights Maryland stated that if two violations (or more) occur in a month, then more frequent training should be required. A minority of disability rights organizations, including the North Dakota Protection and Advocacy Project, did not believe that training every 12 months will be sufficient.

Airline industry stakeholders had mixed opinions on training frequency. A4A recommended that the Department follow the 2024 FAA Act by setting a standard of an 18-month training cycle, which it asserts was based on significant input from the disability community and airlines. A4A stated that this frequency is critical for the continuity and efficiency of airline operations. NACA asserted the current regulatory standard of re-training every three years has been successful and should not be changed. RAA agreed with an 18-month training cycle, while foreign airlines split between 18 and 24 months. Spirit, on the other hand, was fine with annual training so long as it did not need to be provided in a hands-on format.

Other stakeholder comments on the proposed annual training requirements were also mixed. Some stated that annual training is not enough. Open Doors specifically said that transfer training needs to occur every six months.

The NPRM also included a proposed requirement for airlines to consult with disabilities rights advocacy organizations not only regarding the development of their training programs, as required today, but also to consult with such organizations when making changes to disability training programs and related policies and procedures that are expected to have a significant impact on assistance provided to individuals with disabilities. Disability rights organizations were generally in favor of this change as they maintain that they must be involved in developing, auditing, and implementing these training programs. For instance, the Rare Disease Diversity Coalition called for consultation with disability advocates and patient advocacy groups to ensure that training requirements incorporate perspectives from people with disabilities. However, PVA noted that the proposed regulatory language does not require consultation with organizations that represent mobility device users and does not ensure continuous engagement and accountability from airlines.

Airline industry stakeholders had few comments on the aspect of the proposal that concerned consultation with disability organizations on changes to disability training programs and related policies and procedures. A4A agreed

[41] The Department's Airline Passenger with Disabilities Bill of Rights describes the fundamental rights of air travelers with disabilities under the ACAA and 14 CFR part 382. The Bill of Rights is available on the Department's website at *https://www.transportation.gov/airconsumer/disabilitybillofrights.*

with the premise of the consultation proposal and notes that many member airlines have established accessibility advisory groups that work directly with the disability community to improve training and services. However, A4A also requested that airlines be allowed to consult with disability community experts that are not necessarily associated with a particular organization but have equal or higher qualifications. Spirit generally stated that the Department should not regulate which disability organizations the airline confers with and when.

Another point of contention for commenters was the NPRM's proposed definition of ''hands-on training.'' Several disability organizations, including Colorado Cross-Disability Coalition, Access to Independence of Cortland County, and North Dakota Protection and Advocacy Project, commented that the Department's proposed definition is reasonable. Others, including PVA, Indiana Disability Rights, and the Amputee Coalition, objected to the proposed definition. PVA stated that the use of a life-sized model is not an accurate simulation of the realities of transferring individuals with disabilities, who may be of different sizes, weights, and needs. MDA asserted that individuals with disabilities should be active participants in training to ensure skills are transferable in a real-world setting.

Airline industry stakeholders and labor unions also provided mixed feedback. A4A commented that the proposed definition is mostly reasonable but that the Department needs to clarify what is meant by a ''controlled/simulated environment.'' Allegiant found the Department's proposed definition to be reasonable. NACA cautioned that hands-on training should not be performed while on-the-job because of the importance of giving employees an opportunity to make mistakes and learn from them. Transport Workers Union of America (TWU) agreed with the Department's definition while Service Employees International Union (SEIU) did not find the language to be reasonable because it is too broad and urged the inclusion of supervised practicums with real people in the training.

Lastly, the NPRM asked whether the enhanced training requirements should apply to other types of airline employees and contractors such as reservation agents, ticket counter agents, and managers. Disability rights organizations and other stakeholders wanted more employees to be covered under the final rule, while airline industry stakeholders approved of the NPRM's approach on this and opposed any expansion.

Disability rights organizations believed it would be beneficial for other frontline employees, including ticket counter agents and flight attendants, to also be covered by more comprehensive and frequent disability training requirements. They claimed these types of employees need to understand the full process of providing assistance to passengers with disabilities and could be called upon to provide ad-hoc assistance if no one else is available. Other stakeholders, including Open Doors and Able Americans of the National Center for Public Policy Research, shared comments like those of disability advocates. They generally viewed training for more frontline employees as a positive because of their view that the current standards are not sufficient.

Enhanced training for managers and supervisors was mentioned the most in comments from disability rights organizations. MDA stated, ''While managers may not directly assist the traveling public [with physical assistance], they should also receive the same training so that they may effectively assist if any issues arise.'' Similarly, the United States Gender and Disability Justice Alliance stated, ''Supervisors need to have the same training so they are more aware of the [enplaning] and deplaning of people with disabilities, so they are aware of problems when they arise, and can help solve challenges when they arise.''

As mentioned, airline industry stakeholders approved of the NPRM's approach, which allowed for the training to be tailored around the respective duties of each employee. They did not believe that training requirements should apply solely based on an employee's job title. A4A gave the following examples: Ticket counter agents and service call center agents may be involved in the sharing or gathering of passenger information regarding accessibility requests, but they will never handle mobility aids or assist with transferring the passenger; and managers and supervisors may only have duties related to personnel management and may not have actual oversight over employees' performance or functions. In addition, airline industry stakeholders claimed that any expansion of the training requirements could have serious cost and labor implications that were not analyzed in the Department's NPRM.

Separately, the Department also asked whether airlines should be required to designate wheelchair experts and transfer experts who could be consulted should a complex issue or problem arise while handling a passenger's personal wheelchair or while physically assisting a passenger with a disability. The Department received limited feedback on this idea. Generally, disability rights organizations approved of this. PVA stated that designated wheelchair and transfer experts can contribute significantly to resolving the complex issues that can occur when problems arise. PVA suggested that designated wheelchair and transfer experts should have advanced training, similar to a CRO, and serve as a peer leader that can provide meaningful assistance to ensure the passenger and their mobility device are safe throughout the air travel experience. On the other hand, airline industry stakeholders opposed any requirement on experts at this time. A4A argued that it is not clear what is meant by an ''expert'' and what type of training would be needed, what types of benefits such a position would result in, and how often ''complex issues'' even arise during transfers and wheelchair handling.

DOT Response: Based on the comments received in response to the NPRM and Congress's mandate in the 2024 FAA Act requiring a rulemaking on minimum training standards related to assistance to wheelchair users who board or deplane using an aisle chair or other boarding device [42] and stowage of wheelchairs and scooters used by passengers with disabilities on aircraft,[43] it is abundantly clear that the

[42] Section 542 of the 2024 FAA Act, titled ''Improved Training Standards for Assisting Passengers Who Use Wheelchairs,'' requires the Department to issue a rulemaking to develop requirements for minimum training standards for airline personnel and contractors who assist wheelchair users who board or deplane using an aisle chair or other boarding device. The training standards, at a minimum, must require that they be able to successfully demonstrate skills on: (1) how to safely use the aisle chair, or other boarding device, including the use of all straps, brakes, and other safety features; (2) how to assist in the transfer of passengers to and from their wheelchair, the aisle chair, and the aircraft's passenger seat, either by physically lifting the passenger or deploying a mechanical device for the lift or transfer; and (3) how to effectively communicate with, and take instruction from, the passenger. Training on the availability of accessible lavatories and on-board wheelchairs and the right of a qualified individual with a disability to request an on-board wheelchair is also required.

[43] Section 543, titled ''Training Standards for Stowage of Wheelchairs and Scooters,'' requires the Department to issue a rulemaking to develop requirements for minimum training standards related to stowage of wheelchairs and scooters used by passengers with disabilities on aircraft. The training standards, at a minimum, must require that they be able to successfully demonstrate skills on: (1) how to properly handle and configure, at a minimum, the most commonly used power and manual wheelchairs and scooters for stowage on

Continued

Department needs to enhance its current regulatory requirements in order to improve airline training on providing physical assistance to passengers with disabilities and handling passengers' wheelchairs and scooters. These two service areas continue to be a serious concern for disability advocates and individuals with disabilities. As noted in the NPRM, inadequate training of these employees and contractors can result in physical harm to passengers with disabilities and costly damages to passengers' wheelchairs and scooters. The Department is adopting the training requirements largely as proposed, with certain revisions discussed further below.

The Department considers training of carrier personnel or contractors who provide physical assistance to passengers with disabilities and handle passengers' wheelchairs or scooters as vital to good service to passengers and to compliance with the ACAA. While we recognize that carriers already have disability-related training programs, this final rule requires for the first time that airlines address specific topics in the training provided to those who physically assist passengers with disabilities and handle passengers' wheelchairs or scooters. In selecting these topics, the Department considered research carried out by Volpe, laws and guidance of foreign governments, IATA's guidance on wheelchair handling and assistance, and stakeholder comments received. These training topics are expected to better ensure that airline personnel and contractors provide safe and dignified assistance to persons with disabilities. Training received on required topics such as wheelchair disassembly and reassembly and proper loading and securement in the cargo compartment should reduce the likelihood of wheelchairs being damaged, delayed, or lost. Also, training on required topics such as safe and dignified transfer assistance and proper use of airline equipment should improve the overall service provided to persons who need physical assistance. The Department continues to believe that these topics are appropriate for the final rule and notes that the 2024 FAA Act requires these subjects to be covered.[44]

Also, we agree with the many commenters who believe that trainees must be able to show that they grasp the knowledge and concepts presented to them during training and can fully demonstrate tasks in front of an instructor. We acknowledge that this process is vital to a successful training program. As such, the Department is requiring employees and contractors who provide physical assistance to passengers with disabilities who use wheelchairs or scooters or handle passengers' wheelchairs or scooters to successfully demonstrate their knowledge but is not specifying how this must be done (*e.g.,* competency assessments or certification exams). By requiring employees and contractors to demonstrate their knowledge, the Department is expanding upon DOT's existing requirement for airlines to ensure employees or contractors who deal with the traveling public are trained, as appropriate to the duties of each employee, to proficiency and addressing the concern of disability group commenters that some carrier personnel do not seem to have been trained to proficiency.

The Department is also making a few changes to the scope of the required training topics for employees and contractors who provide physical assistance to passengers with disabilities who use wheelchairs or scooters or handle passengers' wheelchairs or scooters in response to comments. First, the Department agrees with the dozens of commenters who stressed the importance of training on effective communications with passengers with mobility disabilities. As PIDS stated, ''this training should include not only technical skills related to handling mobility aids but also emphasize the importance of respectful, person-centered interactions.'' [45] Communications training is also required under the 2024 FAA Act.[46] Accordingly, the Department is adding effective communications to the lists of required training topics noted in 14 CFR 382.141(a)(3)–(4). The Department encourages airlines to not only provide required training but also to consider teaching employees and contractors basic sign language or gestures as it provides a way to communicate with individuals with disabilities that may improve overall communication quality and promote inclusion.

Second, the Department also recognizes the calls from airlines for clarification in the regulation to allow for airlines to tailor the enhanced training around employees' duties and to limit the scope of such enhanced training to wheelchairs and scooters. Both recommendations are in line with the Department's original intent for the NPRM's training proposal. We are not requiring airline employees or contractors to undergo extensive training on topics and devices that are not relevant to their work. The Department has clarified in § 382.141(a)(3) that training is for employees and contractors who provide physical assistance to passengers using wheelchairs or scooters, as appropriate to the duties of each person, and clarified in § 382.141(a)(4) that training is for employees and contractors who handle passengers' wheelchairs or scooters, as appropriate to the duties of each person.

Regarding initial training on the new requirements, after carefully reviewing the comments, the Department is requiring airlines to ensure employees and contractors who provide physical assistance to passengers with disabilities or handle passengers' wheelchairs or scooters receive in-depth hands-on training as required by this final rule no later than June 17, 2026. Airline employees or contractors who are hired after June 17, 2026, must receive in-depth hands-on training as required by this final rule before they assume their duties. The Department believes that 18 months responds to industry concerns about the time it would take develop training programs and train employees and contractors.

As for the frequency of refresher training, the Department is adopting its proposal that refresher training be provided once every twelve months. Refresher training is intended to assist employees and contractors in maintaining proficiency, both by reminding them of ACAA requirements and their carriers' procedures for implementing them. All disability rights organizations were in favor of refresher training being required once a year or called for even stricter training frequencies. The Department was not persuaded by the comments received from airline industry stakeholders to retain the current regulatory standard of refresher training being provided every three years or to follow the 2024 FAA Act by setting a standard of an 18-month training cycle. The 2024 FAA Act states that the Department must require airlines to retrain these employees and contractors every 18 months, ''at a minimum.'' Based on the statutory

each aircraft type operated by the air carrier or foreign air carrier; (2) how to properly review any wheelchair or scooter information provided by the passenger or the wheelchair or scooter manufacturer; and (3) how to properly load, secure, and unload wheelchairs and scooters, including how to use any specialized equipment for loading or unloading, on each aircraft type operated by the air carrier or foreign air carrier.

[44] The FAA Reauthorization Act of 2024, Public Law 118–63, Sec. 542, 543 (May 16, 2024).

[45] Comment from The Partnership for Inclusive Disaster Strategies (PIDS), *https://www.regulations.gov/comment/DOT-OST-2022-0144-1472.*

[46] *See* The FAA Reauthorization Act of 2024, Public Law 118–63, Sec. 542 (May 16, 2024).

language, the Department cannot allow refresher training to be less frequent than 18 months but is permitted to adopt more rigorous standards as it sees fit. In addition, recurring training at least every 12 months gives the airlines the ability to stagger training around busy seasons and other major events as needed. Airlines do not need to wait until exactly the 12-month mark to commence the retraining for an employee.

The Department is also adopting a modified version of the NPRM's training consultation requirement, which stated that when developing disability training programs and related policies and procedures and when making changes to such training programs and related policies and procedures, airlines must consult with disability organizations that represent individuals who would be affected by those changes. Under the final rule, if a disability organization is not available for consultation, then the airline is permitted to work with other individuals with disabilities who are not associated with a particular organization representing individuals with disabilities. The Department recognizes that organizations may not always be readily available to assist the airlines on these training issues because of resource or other issues and understands from comments that certain airlines have established accessibility advisory groups that could step in under these circumstances. Regarding PVA's concerns that airlines may not consult with organizations that represent mobility device users when appropriate since the existing rule requires consultation with organizations representing individuals with disabilities generally, we don't expect for this to be the case because this final rule states, as did the proposal, that airlines ''must consult with organizations representing individuals with disabilities who would be affected by those changes.'' As such, if training changes are made that impact wheelchair services, then airlines are required to work with representatives of wheelchair users.

The Department is also revising its definition for ''hands-on training'' in the final rule based on the comments received. The Department acknowledges that its original proposed definition may have been unclear in some respects. We addressed this potential lack of clarity in a subsequent publicly docketed document responding to questions raised by airline associations.[47] In that document, we explained that while a ''controlled/simulated'' environment for hands-on training was not defined in the NPRM, the Department would consider a ''controlled/simulated'' environment in the context of hands-on training to mean in-person training that offers a safe and controlled environment by the trainer where employees can learn and practice real-life scenarios without the possibility of real-life consequences to passengers with disabilities. In the NPRM, the Department had made clear its view that it would be unsafe for airline employees and contractors to practice transfer assistance for the first time on-the-job while assisting passengers during their travel by suggesting use of a mannequin or a person such as an instructor for the hands-on training. The Department also explained that it does not consider a ''controlled/simulated'' environment to consist of virtual or online training where employees are not receiving hands-on practice. In the final rule, the Department is defining ''hands-on training'' to mean in-person training that is received by an employee or contractor where the employee or contractor can learn and practice real-life scenarios in a safe and controlled environment without the possibility of real-life consequences to passengers with disabilities and with the use of a suitable life-sized model or equipment, as appropriate. In the context of transfer assistance, training may include observation of an actual transfer of an individual with a disability through on-the-job shadowing. However, the Department is declining to mandate the approach mentioned in some disability advocate comments where trainees would practice assistance directly on passengers with disabilities. The Department continues to believe that this would be inappropriate as it poses a risk of harm and injury to the individual(s) with a disability.

The Department is declining to expand the scope of the enhanced training requirements beyond the types of employees and contractors who were covered under the NPRM's proposal—that is employees and contractors who provide physical assistance to passengers with disabilities who use wheelchairs and scooters and employees and contractors who handle passengers' wheelchairs and scooters. The Department considers these types of employees and contractors to include those providing physical assistance directly to passengers with disabilities [48] or handling passengers' wheelchairs or scooters as well as managers, supervisors, and CROs that directly oversee the functions of personnel who provide physical assistance or handle passengers' wheelchairs or scooters or may be called on if an issue arises during these types of assistance. This clarification aligns with both disability advocate commenters who stated that managers and supervisors need enhanced training and airline commenters who called for tailored training based on job duties.

Finally, regarding a requirement for designated wheelchair experts and transfer experts, the Department is declining to take any action at this time given the limited amount of information and data provided on this in response to the NPRM. Also, the Department is of the view that CROs can provide this type of assistance since CROs are the carrier's ''expert'' in compliance with the requirements of the ACAA and part 382 and are required to be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to passengers with a disability.[49]

F. Improved Standards for On-Board Wheelchairs

The NPRM: In the NPRM, the Department proposed to require expanded use of on-board wheelchairs (OBWs) with improved safety and accessibility features. For background, OBWs are wheelchairs that are used to transport an individual with a mobility disability between an aircraft seat and an aircraft lavatory. In our 2023 accessible-lavatory final rule, we set new safety and accessibility standards for OBWs to be installed on new single-aisle aircraft with 125 or more passenger seats that are delivered on or after October 2, 2026.[50] We also stated that if a carrier *replaced* an OBW on *any* large single-aisle aircraft after October 2, 2026, then the replacement OBW must also meet the improved standards.[51] In short, our 2023 final rule required improved OBWs only in the context of large single-aisle aircraft.

[47] *See* Department Responses to Questions by Airline Associations Regarding Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs NPRM, *https://www.regulations.gov/document/DOT-OST-2022-0144-1318.*

[48] The Department considered but ultimately decided against requiring airlines to provide hands-on training to flight attendants because they do not physically assist persons with disabilities. Airlines are required to assist individuals with disabilities on board an aircraft with the use of the on-board wheelchair to enable the person to move to and from a lavatory but the assistance to a semi-ambulatory person in moving to and from the lavatory does not include lifting or carrying the person. See 14 CFR 382.111(c) and (d).

[49] See 14 CFR 382.151.

[50] See 14 CFR 382.65(e), which describes in detail the improved OBW standards.

[51] 14 CFR 382.65(h).

In the NPRM, we proposed to further expand the use of improved OBWs in several different ways. First, we proposed that if carriers purchase an OBW after October 2, 2026, then it must meet the Department's new standards. We reasoned that because improved OBWs will be available on the market at that time, then those OBWs should be selected if airlines choose to purchase an OBW for any reason. Second, we proposed that any aircraft with 60 or more passenger seats and an accessible lavatory (*e.g.,* twin-aisle aircraft) [52] that are delivered after October 2, 2026, must be equipped with an improved OBW. This proposal would ensure that new twin-aisle aircraft are equipped with improved OBWs, just like new large single-aisle aircraft. Finally, we proposed that, by October 2, 2031, *all* OBWs for use on aircraft with 60 or more seats must meet the Department's new safety and accessibility standards. We reasoned that it is important to have a date certain for all OBWs to meet the improved standards.

We recognize that OBWs are manufactured by third parties, not by airlines; therefore, airlines cannot guarantee that an OBW meeting all the DOT's safety and accessibility features will be available on the market by October 2, 2026. Thus, we proposed that carriers must acquire OBWs that comply with as many of the new safety and accessibility requirements as are available on the market; if a specific safety or accessibility feature is unavailable, then carriers must inform the Department of that fact. This proposal tracked the protocol that we adopted in the 2023 accessible lavatories final rule.[53] Finally, in the NPRM, we asked questions about whether airlines should expand the interior stowage space in aircraft to accommodate improved OBWs.[54]

Comments Received: Disability organizations, including PVA et al., generally support the NPRM as proposed; however, they urged DOT to adopt October 2026 rather than October 2031 as the compliance date for universal adoption. They contend that ''there are currently OBWs on the market that advertise themselves as being compliant'' with the 2023 standards, and therefore there is no reason to include an additional five years for universal adoption, because a marketplace solution already exists.[55] They also asked the Department to adopt information and training requirements for OBWs. Approximately 35 individuals offered comments on this proposal; all were generally supportive.

A4A and IATA suggested that the Department adopt compliance deadlines that are tied to the effective date of the final rule, rather than the proposed fixed dates. Specifically, they recommended that any requirement for an improved OBW when airlines choose to purchase an OBW or when airlines install an OBW on new twin-aisle aircraft have a compliance date of two years from the effective date of this final rule. A4A and IATA recommended five years from the effective date of this final rule for universal compliance with improved OBW standards. They assert that fully-compliant OBWs are not yet available on the market, and that the extra time will allow airlines to avoid contractual/supply chain difficulties, especially when OBWs are almost never used on smaller aircraft. A4A and IATA also expressed concerns about airlines being required to continually purchase upgraded OBWs over time as newer OBWs meeting more safety and accessibility features are made available in the market.

Regarding stowage space for OBWs, A4A, IATA, and RAA state that there is no basis for requiring expansion of OBW stowage space, particularly since the dimensions of improved OBWs are currently unknown. Carriers state that they will find appropriate stowage space on the aircraft for the OBW without a DOT rule requiring expansion of a dedicated stowage space. RAA expressed concerns about requiring carriers to install improved OBWs onboard the aircraft, as opposed to simply making them available for use.

DOT Response: We are adopting the final rule as proposed with respect to improved OBW standards. In our view, it is reasonable to require the safety and accessibility features of improved OBWs in cases where carriers *voluntarily* purchase new OBWs after October 2026, and where carriers purchase new OBWs after that date to install on new twin-aisle aircraft. Because improved OBWs will be on the market by that time for installation on new large *single*-aisle aircraft, it is also reasonable to require those same improved OBWs within the same time frame on new *twin*-aisle aircraft and for voluntarily purchased OBWs.[56] Finally, the Department continues to be of the view that it is reasonable to set an October 2031 deadline for universal adoption of improved OBWs for use on all aircraft with more than 60 seats. In our view, this deadline provides manufacturers appropriate additional time both to innovate (to produce OBWs with more safety and accessibility features) and to produce a sufficient supply of improved OBWs for use throughout airline systems. Similarly, the October 2031 deadline provides airlines additional flexibility to address any contracting and supply-chain issues they may experience in the process of purchasing new OBWs and replacing older OBWs throughout their system.

Despite industry comments to the contrary, nothing in the proposal or this rule requires airlines to continuously purchase new models of improved OBWs every time a new safety or accessibility feature becomes available. If an airline purchases a compliant OBW with as many safety and accessibility features as are available in October 2026, then it will be deemed to be in compliance until October 2031. By October 2031, however, airlines are expected to acquire OBWs with as many safety and accessibility features as are available in the market at that time. We agree with commenters that there is no need to specifically mandate an expansion of dedicated OBW space onboard aircraft, given that the dimensions of any new OBW are currently unknown, and given airlines' assurance that they will find appropriate stowage space. Finally, with regard to advocates' request for information and training requirements, we find that they are not necessary because of existing requirements. The Department already requires airlines to train flight attendants to proficiency, by October 2, 2026, to provide assistance in transporting persons with disabilities to and from lavatory from the aircraft seat, including training on use of OBWs. The Department also already requires airlines to provide information on request and post information on their

[52] See 14 CFR 382.65(a), which specifies that aircraft with more than 60 seats and an accessible lavatory must have an OBW. See also 14 CFR 382.65(b), which specifies that aircraft with more than 60 seats and no accessible lavatory must still have an OBW if a passenger requests one.

[53] 14 CFR 382.65(g).

[54] For new single-aisle aircraft over 125 seats that are delivered after October 2, 2026, carriers are not required to expand the existing FAA-certificated on-board wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft, in order to stow the improved OBW. However, if the OBW does not fit within the original stowage space, and another space exists (*e.g.,* an overhead compartment) where it could fit consistent with FAA safety standards, then the carrier must stow it in that space and must request any necessary FAA approval to do so. 14 CFR 382.65(f).

[55] *See* Comment of PVA et al. at 50; *see also* Comment of The Arc at 45 (both with no examples provided).

[56] Given the relatively small number of new twin-aisle aircraft being delivered to airlines, compared to new large single-aisle aircraft, we believe the incremental cost to airlines will be both minimal and cost-justified for the reasons stated in our accessible lavatories final rule.

websites regarding the accessibility features of aircraft lavatories by October 2, 2026.[57]

G. Size Standard for Lavatories on Twin-Aisle Aircraft

The NPRM: In the NPRM, the Department sought comment on whether it should require airlines to expand the size of lavatories on twin-aisle aircraft. We noted that in 2023, we set new size standards for lavatories on large *single*-aisle aircraft.[58] Specifically, new single-aisle aircraft with an FAA-certificated maximum seating capacity of 125 seats or more in which lavatories are provided, must include at least one lavatory of sufficient size to permit a qualified individual with a disability equivalent in size to a 95th-percentile male to approach, enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair, in a closed space that affords privacy equivalent to that afforded to ambulatory users. The lavatory must also be large enough to permit an assistant equivalent in size to a 95th-percentile male to assist the individual with a disability.[59] This ''95/95 standard'' applies to new single-aisle aircraft originally ordered after October 3, 2033, or delivered after October 2, 2035, or are part of a new type-certificated design filed with the FAA or a foreign carrier's safety authority after October 2, 2024.[60]

In the NPRM, we noted that the 95/95 standard for new single-aisle aircraft is likely *larger* than the standard for twin-aisle aircraft lavatories. Part 382 requires twin-aisle aircraft to include at least one lavatory of sufficient size to permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair, while affording privacy equivalent to that afforded ambulatory users.[61] The twin-aisle standard does not specifically reference attendants, and does not specifically reference the size of either the passenger or the attendant.

We sought comment on whether to apply the 95/95 standard to twin-aisle aircraft, particularly because twin-aisle aircraft are typically used for even longer flights than single-aisle aircraft.[62] While we did not propose specific rule text, we asked extensive questions about the size and accessibility of twin-aisle aircraft lavatories today, as well as the costs and benefits of adopting a larger size standard. We requested, but did not receive, significant data on these questions during the previous rulemaking on accessible lavatories.

Comments Received: Most disability organizations, including PVA et al., recommended adopting the 95/95 standard for twin-aisle aircraft to ensure consistency across long-haul flights.[63] They cited anecdotes from passengers with disabilities, and PVA survey data, indicating that passengers' experience with current twin-aisle lavatories is ''varied,'' with some lavatories reported to be too dangerous and/or too small. A minority of advocates urged DOT to require even larger lavatories (*e.g.,* large enough to accommodate two attendants and/or an adult changing table). Approximately 30 individuals offered comments specifically on this proposal. All were supportive, with most expressing concern about the size of lavatories generally.

Airline industry stakeholders, particularly A4A and IATA, urged the Department to further study the issue via the ACAA Advisory Committee, or via a full notice and comment process with proposed regulatory text, and seek input from lavatory manufacturers, before adopting any rule. They argued that the Department has no basis for calculating costs or benefits, given the lack of data on whether current lavatories are effective and/or meet the 95/95 standard. For similar reasons, they were not in favor of the Department setting an implementation period. Two airlines supported the 95/95 standard for twin-aisle aircraft in conjunction with further study/cooperation with advocates. Boeing indicated that they did not know the precise parameters of what would meet the 95/95 standard. The aircraft manufacturer urged further study, including study of transfer training and on-board wheelchair (OBW) size. Boeing did not provide any data on whether lavatories today meet the 95/95 standard. They suggested that their twin-aisle lavatories meet non-binding 1992 guidelines, which called for a 97.5th-percentile-male standard.[64] We received no comments from other manufacturers of aircraft or aircraft lavatories.

DOT Response: Despite our efforts through this NPRM and the prior rulemaking on accessible lavatories, the Department has not received adequate data from which to assess the costs and benefits of a requirement to adopt a 95/95 standard for lavatories on twin-aisle aircraft. We believe it is generally reasonable to assume that a lavatory meeting the 95/95 standard would be as large as, or larger than, the typical baseline accessible lavatory found on twin-aisle aircraft today.[65] However, it is not clear how much larger a 95/95 lavatory would be, and it is also not clear whether any incremental benefits of a 95/95 lavatory would justify the costs of a requirement to install them. For this reason, the Department is deferring for a later rulemaking the determination of whether to apply the 95/95 standard to twin-aisle aircraft. Meanwhile, the Department plans to examine how best to obtain sufficient data and information so as not to delay action in this area. This issue remains an area of interest for the Department given twin-aisle aircraft are typically used for even longer flights than single-aisle aircraft.

III. Compliance Periods

Carriers must comply with the provisions in this final rule by January 16, 2025, with some exceptions.

On or after March 17, 2025, airlines must offer passengers the option of either the carrier handling the prompt repair or replacement of the passengers' wheelchairs/scooter or the passenger arranging for the repair or replacement of the device through his or her preferred vendor. Carriers also have until that date to comply with the requirement to notify in writing passengers whose wheelchairs or scooters have been mishandled of their rights, including their right to choose a preferred vendor, if desired, for device

[57] See 14 CFR 382.63(h). We also note that Section 551 of 2024 FAA Act requires airlines to inform passengers about the rights and responsibilities of both passengers and airlines regarding the use of OBWs. This information must be provided: (1) on airline websites; and (2) when individuals book a ticket on a ''covered aircraft'' and inform an air carrier or foreign air carrier that they require the use of any wheelchair. A ''covered aircraft'' is any aircraft that is required to be equipped with an OBW pursuant to § 382.65.

[58] Accessible Lavatories on Single-Aisle Aircraft, 88 FR 50020 (August 1, 2023).

[59] 14 CFR 382.64(a)(1–2).

[60] 14 CFR 382.64(c).

[61] 14 CFR 382.63(a)(1–2).

[62] Analysis of Bureau of Transportation Statistics T–100 All Segment data. Data retrieved in Aug. 2023.

[63] Opinions were mixed on a recommended implementation date. Most advocates supported implementation for twin-aisle aircraft ordered one year after the effective date of the final rule, or delivered two years after the effective date of the final rule. Others suggested a similar 10–12 year implementation timeframe as we adopted in the 2023 rulemaking; others urged action as soon as possible.

[64] See *https://www.transportation.gov/sites/dot.gov/files/docs/ATA%20Guidelines%20Lavatories1.pdf.* In 1992, a 97th-percentile male weighed 240 pounds; in 2024; a 95th-percentile male weighs 280 pounds.

[65] As noted above, the 95/95 standard explicitly calls for a lavatory large enough to accommodate both a large passenger and a large attendant, while the twin-aisle lavatory standard is silent regarding the size of the passenger or the attendant.

repairs or replacement. The requirement for airlines to reimburse passengers the difference between the fare on a flight a wheelchair or scooter user took and the fare on a flight that the wheelchair or scooter user would have taken if his or her wheelchair had fit is also March 17, 2025.

Beginning on June 16, 2025, carriers must transport a delayed wheelchair or scooter to the passenger's final destination within 24 hours of the passenger's arrival for domestic flights and short international flights and within 30 hours of the passenger's arrival for long international flights.

On or after December 17, 2025, carriers must comply with the requirement to notify passengers whether their wheelchairs or scooters have been loaded onto their flights (including whether their device could not fit on the passenger's scheduled flight because of its size or weight) before the aircraft cabin door closes and the requirement to notify passengers with disabilities before they deplane when their wheelchairs or scooters have been unloaded from the cargo compartments of their flights upon arrival. Carriers also have until that date to establish and provide, after consultation with disability rights organizations, safe and adequate seating accommodation(s) to be used by a person with a disability when waiting for a delayed personal wheelchair or waiting for a loaner wheelchair after a passenger's wheelchair or scooter is mishandled by the carrier and cannot be promptly returned.

No later than June 17, 2026, carriers must have provided or ensured initial training on the new requirements for all employees and contractors who provide physical assistance to passengers with mobility disabilities or handle passengers' wheelchairs or scooters, including in-depth hands-on training. Relevant airline employees or contractors who are hired after June 17, 2026, must receive in-depth hands-on training as required by this final rule before they assume their duties.

IV. Severability

The overall purpose of this final rule is to increase access to safe and dignified air travel for individuals with disabilities. Some of the provisions of this final rule clarify the Department's existing interpretation of the ACAA by specifying when safe, adequate, and prompt assistance is required to be provided by airlines. Other provisions improve accommodations for individuals with disabilities in the event of a wheelchair mishandling by an airline. Such provisions include notifying passengers when their wheelchairs have been loaded onto and off of the aircraft, strict timeframes for the return of a delayed wheelchair, improved options for passengers when coordinating wheelchair repairs and replacements, new requirements for loaner wheelchairs, and provisions for reimbursing passengers for costs related to mishandlings. Separately, the rule requires airline personnel that provide physical assistance to individuals with disabilities and that handle passengers' personal wheelchairs to receive annual hands-on training. Finally, the rule requires an expanded rollout of OBWs with improved safety and accessibility features.

This entire suite of measures is designed to ensure accessibility and equality in air travel for individuals with disabilities and to address the ongoing and serious difficulties that wheelchair users experience today when traveling, including wheelchair damage and personal injuries. However, the Department finds that these proposals can operate independently from each other, if necessary, and are intended to operate as such. For example, the requirement that service must be safe and dignified (as defined in this rule) is intended to operate separately from the requirement that assistance must be prompt. Updated training standards can operate separately and are not related to requirements to reimburse passengers with disabilities the difference between the fare on a flight taken by a passenger who uses a wheelchair and the fare on a flight that the passenger would have taken if his or her wheelchair had been able to fit in the cabin or cargo compartment of the aircraft. Likewise, the new rule text regarding a rebuttable presumption of a violation set forth the specific metric by which the Department measures violations of the ACAA for enforcement purposes is separate and unrelated from requirements regarding standards for on-board wheelchairs. Even the notification provisions can stand separately from each other because they relate to distinct and independent duties to notify passengers of their rights before the flight, during the journey, and after the flight. In general, in the event that a court were to invalidate one or more of this final rule's provisions as finalized, the Department's intent is that the remaining provisions should remain in effect to the greatest extent possible.

V. Regulatory Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review''), supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review''), directs Federal agencies to propose or adopt a regulation only after making a reasoned determination that the benefits of the intended regulation justifies its costs. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action under Executive Order 12866 and requires an assessment of potential benefits and costs. Accordingly, the Department has prepared a regulatory impact analysis (RIA) for the final rule, summarized in this section and available in the docket. Table 1 below provides a summary of the costs and benefits of this proposed rulemaking.

The rule is expected to reduce injuries, including fatalities, sustained by passengers with disabilities while receiving physical assistance from airline staff (this physical assistance is usually provided when transferring between different types of wheelchairs and between wheelchairs and airplane seats). Benefits of avoided injuries and fatalities due to improved transfer assistance are discussed qualitatively but were not quantified due to uncertainty related to baseline rate of fatality or injury per enplanement from poor transfer assistance, the effectiveness of the final rule in preventing such injuries and fatalities, and the typical social cost of such injuries. Additional unquantified benefits from the final rule include the avoidance of potentially embarrassing or undignified experiences from poor transfer assistance that include being treated disrespectfully, being dropped, or having clothing disarrayed and body parts exposed.

The rule is also expected to reduce the frequency and degree of damages to wheelchairs and scooters and the impacts to passengers due to damaged wheelchairs and scooters. Wheelchair and scooter mishandlings can make them inoperable, which is an undignified situation and has an immediate and severe impact on passengers' personal mobility. It can also lead to passengers suffering injuries from using a temporary wheelchair or scooter that is not customized to their needs while their personal wheelchair or scooter is being repaired or replaced. Passengers who use OBWs conforming

to the new performance standards will benefit from the increased safety and accessibility features of the wheelchairs, leading to reduced injury during use of the OBW during flight. The greater safety, convenience, and accessibility provided by these provisions could lead passengers with disabilities to increase their use of air travel, either by switching from slower modes of travel or by making more long-distance trips. The potential increase in travel and the associated increase in consumer surplus have not been quantified in this analysis.

Under the final rule, the additional training requirement will increase costs for carriers in the form of additional labor hours for personnel who will receive training, labor hours for trainers, and in some cases additional cost to acquire and maintain equipment used in the training. Carriers will have flexibility in terms of how they manage the trainings and how they are performed, but the final rule requires certain topics be covered. Some of the provisions of the final rule are expected to have costs but have not been estimated quantitatively. These impacts have been summarized in tables 1 and 2 below.

BILLING CODE P

Table 1: Total Benefits and Costs for Quantified Provisions (2025-2044) (millions)

Final Rule Provision	Costs/Benefits	Total 20-year Value Discounted at 2 percent	Annualized Value, Discounted at 2 Percent	Unquantified Impacts
§ 382.141 Enhanced Training Requirements for Certain Airline Personnel and Contractors	Costs	-$292.7	-$14.7	N/A
	Benefits	*$221.2*	*$11.1*	Avoided Loss of Mobility; Improved Passenger Dignity; Avoided Fatalities and Injuries
§ 382.141 Enhanced Wheelchair Handling Training Component	*Costs*	-$149.6	-$7.5	*N/A*
	Benefits	*$221.2*	*$11.1*	*Avoided Loss of Mobility; Avoided Fatalities and Injuries*
§ 382.141 Enhanced Physical Assistance Training Component	*Costs*	-$143.1	-$7.2	*N/A*
	Benefits	Not quantified	Not quantified	*Improved Passenger Dignity; Avoided Fatalities and Injuries*
§ 382.65 Onboard Wheelchair Performance Requirements	Costs	-$18.0	-$0.9	N/A
	Benefits	Not quantified	Not quantified	Avoided Injuries, and Lavatory Accessibility
Total Costs		-$310.7	-$15.6	*N/A*
Total Benefits		$221.2	*$11.1*	*N/A*
Net Benefits		-$89.5	-$4.5	*N/A*

Table 2: Impacts for Unquantified Provisions

Final Rule Provision	Costs/Benefits	Impacts
Safe and Dignified Assistance for Passengers with Disabilities (§ 382.11(b) and § 382.3)	Benefits	Clarifies Existing Requirements
	Costs	Potentially additional staffing in some circumstances
	Transfers	N/A
Prompt Boarding, Deplaning, and Connecting Assistance for Passengers with Disabilities (§ 382.89(a) and § 382.89(b))	Benefits	Clarifies existing requirements
	Costs	Potential additional staffing in some circumstances
	Transfers	N/A
Wheelchair Handling Requirements (§ 382.130(a-b))	Benefits	Clarifies existing requirements
	Costs	N/A
	Transfers	N/A
	Benefits	Passengers have critical information
	Costs	Development and operation costs for airlines

Final Rule Provision	Costs/Benefits	Impacts
Passenger Notifications (§382.41(b), § 382.125, § 382.130)	Transfers	N/A
Prompt Return of Delayed Wheelchairs or Scooters (§ 382.130(c)(1-5))	Benefits	Avoided fatalities and injuries; mobility
	Costs	Potentially high incremental costs for returning delayed wheelchairs in some circumstances.
	Transfers	Carriers incur ground transportation cost reimbursement dollar for dollar, and passengers receive benefit of reimbursement dollar for dollar.
Prompt Repair or Replacement of Damaged Wheelchairs or Scooters (§ 382.130(d))	Benefits	Avoided fatalities and injuries; mobility
	Costs	Development and operation costs for airlines.
	Transfers	
Loaner Wheelchair Accommodations (§ 382.130(e) and 382.130(c)(4))	Benefits	Avoided fatalities and injuries; mobility while passenger's chair is being repaired
	Costs	Potential costs for new terminal seating
	Transfers	-
Fare Difference Reimbursement and Rebooking Requirements (§ 382.132 and 382.125(f)(2))	Benefits	Increased accessibility for preferred routes and times. Avoided delayed wheelchair and safety and mobility; avoided final destination delivery costs for delayed wheelchairs
	Costs	Development and operation costs for airlines.
	Transfers	Carriers incur cost of reimbursement dollar for dollar, and passengers receive benefit of reimbursement dollar for dollar.
All Provisions	Benefits	New trips taken by people with disabilities; generalized cost reduction for passengers with disabilities switching to air travel from other modes.
	Costs	Potential increased average cost per seat due to increase in share of passengers using wheelchairs
	Transfers	-

BILLING CODE C

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000-pound payload capacity).[66] In 2024, 29 air carriers meeting these criteria reported passengers traffic data to the Bureau of Transportation Statistics.[67] As described in the Final Regulatory Flexibility Analysis (FRFA), the primary regulatory initiatives discussed in this final rule would apply to carriers that operate aircraft with FAA-certificated maximum capacity of 19 or more seats. This group of impacted air carriers includes small businesses. There would be an impact on those carriers due to proposed increased training requirements for personnel who provide physical assistance and perform wheelchair handling. The RIA estimates that the final rule would require two additional hours of training per year for personnel performing physical assistance or performing wheelchair handling (§ 382.141), as well as costs related to trainers and materials. However, the cost of two additional hours of wages per year per employee is expected to be nonsignificant. Assuming

[66] 14 CFR 298.2.

[67] Bureau of Transportation Statistics. No date. ''Aviation Support Tables: Carrier Decode'' *https://www.transtats.bts.gov/DL_SelectFields.aspx?gnoyr_VQ=GDH&QO_fu146_anzr=N8vn6v10%20f722146%20gnoyr5*. To access the data, download all field names, filter to only show ''Carrier_Group_New'' code 5, sort by End_Date, and count entries with no End_Date value.

relevant personnel work 2,000 hours per year on average (40 hours per week times 50 weeks per year), a two-hour increase is just a 0.1% increase in labor costs for the impacted roles which would be a much smaller percentage of all labor costs and an even smaller percentage of all operating costs. The other provisions of the rule either apply only to carriers that operate at least one aircraft with more than 60 seats and are therefore not small businesses, or do not impose costs. Accordingly, the Department does not believe that the final rule would have a significant impact on a substantial number of small entities.

One regulatory alternative which would reduce impacts on small businesses due to the rule is to require enhanced training only for carriers that operate any aircraft with more than 60 seats. The Department has concluded that this alternative does not meet the objectives of the rulemaking. Employees and contractors of carriers that qualify as small entities should also be sufficiently trained to ensure that passengers who use wheelchairs, including those who live in smaller communities of the country, receive safe, prompt, and dignified assistance during air travel.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not (1) have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on State and local governments; or (3) preempt State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule will not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

This final rule adds new collections of information that would require OMB approval under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*) (PRA).

The rule requires carriers to notify passengers in writing when they are checking their wheelchairs or scooters that if their wheelchair or scooter is mishandled, they have the right to contact a CRO and a right to file a claim with the carrier.

The rule requires carriers to notify passengers whether their wheelchairs or scooters have been loaded onto their flights (including whether their device could not fit on the passenger's scheduled flight because of its size or weight) before the aircraft cabin door closes. The rule also requires carriers to notify passengers, before they deplane, when their wheelchairs or scooters have been unloaded from the cargo compartment of their flights.

Next, the rule requires airlines to notify passengers whose wheelchairs or scooters have been mishandled in writing of their rights: (1) to file a claim with the airline, (2) to receive a loaner wheelchair from the airline with certain customizations, (3) to choose a preferred vendor, if desired, for device repairs or replacement, and (4) to have a CRO available and be provided information on how to contact the CRO.

The rule also requires airlines to provide status update notifications to passengers on their delayed wheelchairs or scooters when there is a status change. Carriers must also publish information in a prominent and easily accessible place on their public-facing websites describing the relevant dimensions and other characteristics of the cargo holds of all aircraft types operated by the carrier, including the dimensions of the cargo hold entry, that would limit the size, weight, and allowable type of cargo.

In addition, the rule requires airlines to disclose on their websites information on the documentation required from the passengers related to reimbursements of the fare difference when passengers who use wheelchairs or scooters cannot book their preferred flight because their wheelchairs or scooters cannot fit in the cabin or cargo compartment of the aircraft of their preferred flights, and the passengers must book more expensive flights that can accommodate their wheelchairs or scooters.

Notifications must be provided in an accessible format for individuals with disabilities. A carrier is defined as a U.S. citizen or foreign citizen that undertakes, directly or indirectly, or by a lease or any other arrangement, to engage in air transportation. Under the PRA, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing notice of the proposed information collection and a 60-day comment period, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The Department has not yet published a notice of the proposed information collection.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. As described elsewhere in the preamble, this final rule will have no such effect on State, local, and Tribal governments or on the private sector. Therefore, the Department has determined that no assessment is required pursuant to UMRA.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 Fed. Red. 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).[68] In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.[69] Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes ''[a]ctions relating to consumer protection, including regulations.'' This rulemaking concerns consumer and civil rights protection for individuals with disabilities. The Department does

[68] *See* 40 CFR 1508.4.

[69] *Id.*

not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, Consumer protection, Individuals with Disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 382 as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

■ 1. Amend the authority citation for part 382 to read as follows:

Authority: 49 U.S.C. 41702 and 41705, Pub. L. 115–254, and Pub. L. 118–63.

Subpart A—General Provisions

■ 2. Amend § 382.3 by adding in alphabetical order definitions for ''Custody'', ''Dignified'', ''Hands-on training'', ''Mishandled'', and ''Safe'' to read as follows:

§ 382.3 What do the terms in this rule mean?

* * * * *

Custody means the time period when a passenger has checked a wheelchair, scooter, or other assistive device with a carrier and the carrier has control of a passenger's wheelchair, scooter, or other assistive device.

(1) An airline's custody begins when the passenger hands the device to an airline's representative or agent or leaves the wheelchair, scooter, or other assistive device at a location as instructed by the airline.

(2) An airline's custody ends when the passenger, or someone acting on behalf of the passenger, or another airline takes physical possession of the wheelchair, scooter, or other assistive device.

* * * * *

Dignified means assistance provided in a manner that respects a passenger's independence, autonomy, and privacy, which includes but is not limited to: airline personnel providing transfer assistance in a manner that ensures the passenger's clothing is not removed; airline personnel not unduly delaying requests for access to a restroom such that the individual soils himself or herself; and, to the maximum extent possible, airline personnel communicating directly with the individual with disability (*e.g.,* rather than his or her companion or another individual) when the individual with disability is interacting with them.

* * * * *

Hands-on training means in-person training that is received by an employee or contractor where the employee or contractor can learn and practice real-life scenarios in a safe and controlled environment without the possibility of real-life consequences to passengers with disabilities and with the use of a suitable life-sized model or equipment, as appropriate.

* * * * *

Mishandled means lost, delayed, damaged, or pilfered.

* * * * *

Safe means assistance provided to individuals with disabilities that does not put them at heightened risk of bodily injury, which may include loss or damage to wheelchairs and other assistive devices that result in bodily injury.

* * * * *

Subpart B—Nondiscrimination and Access to Services and Information

■ 3. In § 382.11, redesignate paragraph (b) as paragraph (c) and add new paragraph (b) to read as follows:

§ 382.11 What is the general nondiscrimination requirement of this part?

* * * * *

(b) As a carrier or an indirect carrier, the assistance you provide with respect to this part must be performed in a safe and dignified manner.

* * * * *

Subpart C—Information for Passengers

■ 4. Revise § 382.41 to read as follows:

§ 382.41 What flight-related information must carriers provide to qualified individuals with a disability?

(a) As a carrier, you must provide the following information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning the accessibility of the aircraft expected to make a particular flight. The information you provide must be specific to the aircraft you expect to use for the flight unless it is unfeasible for you to do so (*e.g.,* because unpredictable circumstances such as weather or a mechanical problem require substitution of another aircraft that could affect the location or availability of an accommodation). The required information is:

(1) The specific location of seats, if any, with movable armrests (*i.e.,* by row and seat number);

(2) The specific location of seats (*i.e.,* by row and seat number) that the carrier, consistent with this part, does not make available to passengers with a disability (*e.g.,* exit row seats);

(3) Any aircraft-related, service-related or other limitations on the ability to accommodate passengers with a disability, including limitations on the availability of level-entry boarding to the aircraft at any airport involved with the flight. You must provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(4) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability, including storage in the cabin of a passenger's wheelchair as provided in §§ 382.67 and 382.123;

(5) Information regarding accessibility of lavatories (*see* § 382.63(h)); and

(6) The types of services to passengers with a disability that are or are not available on the flight.

(b) As a carrier, you must publish information in a prominent and easily accessible place on your public-facing website(s) describing the relevant dimensions and other characteristics of the cargo holds of all aircraft types you operate, including the dimensions of the cargo hold entry, that would limit the size, weight, and allowable type of cargo.

Subpart E—Accessibility of Aircraft

■ 5. In § 382.65, revise paragraph (h) to read as follows:

* * * * *

(h)(1) If you replace an on-board wheelchair supplied on aircraft with an FAA-certificated maximum seating capacity of 125 or more after October 2, 2026, then you must replace it with an on-board wheelchair that meets the standards set forth in paragraph (e) of this section.

(2) After October 2, 2026, if you purchase or otherwise obtain a new on-board wheelchair for use on aircraft with more than 60 passenger seats, it must meet the standards set forth in paragraph (e) of this section.

(3) Any on-board wheelchair supplied on aircraft with an FAA-certificated maximum seating capacity of more than 60 passenger seats and that has an accessible lavatory and that was delivered after October 2, 2026, must meet the standards set forth in paragraph (e) of this section.

(4) After October 2, 2031, any on-board wheelchair that you provide for

passengers' use on aircraft with more than 60 passenger seats must meet the standards set forth in paragraph (e) of this section.

(5) For purposes of paragraphs (h)(2) through (4) of this section, you must acquire OBWs that comply with as many of the safety and accessibility requirements in paragraph (e) of this section as are available. You must inform the Department at the address cited in 14 CFR 382.159 that an on-board wheelchair meeting that requirement is unavailable, if that is the case.

Subpart G—Boarding, Deplaning, and Connecting Assistance

■ 6. Section 382.89 is added to subpart G to read as follows:

§ 382.89 How timely must the service required under this Subpart be provided by carriers to passengers with disabilities?

(a) As a carrier, the assistance you provide with respect to this subpart must be performed in a prompt manner.

(b) Whether the assistance is prompt is dependent on the totality of the circumstances, except, for as set forth in paragraph (c) of this section.

(c) Prompt assistance for a person who uses a boarding chair (*i.e.,* aisle chair) in deplaning means:

(1) Personnel and boarding chair must be available to deplane the passenger when the last passenger who did not request deplaning assistance departs the aircraft;

(2) The passenger's personal wheelchair must be available as close as possible to the door of the aircraft to the maximum extent possible, except:

(i) Where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials; or

(ii) When the passenger requests the wheelchair be returned at a location other than the door of the aircraft; and

(3) When a passenger's personal wheelchair is not available at the door of the aircraft for the reasons set forth in paragraph (c)(2) of this section, an airport wheelchair must be available as close as possible to the door of the aircraft for the passenger's use.

■ 7. In § 382.95, revise paragraph (a) to read as follows:

§ 382.95 What are carriers' general obligations with respect to boarding and deplaning assistance?

(a) As a carrier, you must provide or ensure the provision of assistance requested by or on behalf of passengers with a disability, or offered by carrier or airport operator personnel and accepted by passengers with a disability, in enplaning and deplaning. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs, and/or on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

* * * * *

Subpart I—Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices

■ 8. In § 382.125, add paragraphs (e) and (f) to read as follows:

§ 382.125 What procedures do carriers follow when wheelchairs, other mobility aids, and other assistive devices must be stowed in the cargo compartment?

* * * * *

(e) You must notify passengers in writing when they check wheelchairs or scooters to be stowed in the baggage compartment that they have the right to contact a CRO, how they can contact a CRO, and the right to file a claim with the airline if their wheelchairs or scooters are mishandled while in your custody. You must provide this notification in an accessible format for individuals with disabilities.

(f)(1) You must notify passengers with disabilities, before the aircraft cabin door closes, whether their wheelchairs or scooters have been loaded in the cargo compartments of their flights, including whether their device could not fit on the passenger's scheduled flight because of its size or weight.

(2) If a passenger's wheelchair or scooter is not loaded on his or her scheduled flight for whatever reason, you must offer to disembark the passenger and rebook them at no additional cost on the next available flight operated by you or a partner carrier. In addition, when you become aware that a passenger's wheelchair or scooter does not fit on the passenger's scheduled flight, if that is the case, you must offer to rebook the passenger at no additional cost on the next available flight operated by you or a partner carrier where the wheelchair or scooter will fit, if such an aircraft is available.

(3) You must notify passengers with disabilities, before they deplane, when their wheelchairs or scooters have been unloaded from the cargo compartments of their flights upon arrival.

(4) You must provide the notifications required by paragraphs (f)(1) and (3) of this section in an accessible format for individuals with disabilities.

■ 9. Section 382.130 is added to read as follows:

§ 382.130 What are the handling requirements for wheelchairs, scooters, other mobility aids, and other assistive devices and what obligations apply when wheelchairs or other assistive devices are mishandled?

(a) You must return checked wheelchairs, scooters, other mobility aids, and other assistive devices to the passenger in the condition in which you received them. Whenever a passenger's checked wheelchair, scooter, other mobility aid, or other assistive device that was in your custody is not returned to the passenger in the same condition it was received, there is a rebuttable presumption that you mishandled the passenger's wheelchair, scooter, other mobility aid, or other assistive device in violation of the ACAA.

(1) The presumption of a violation in this paragraph (a) can be overcome if you can successfully demonstrate that the alleged mishandling of the wheelchair, scooter, other mobility aid, or other assistive device did not occur while the wheelchair, scooter, other mobility aid, or assistive device was in your control and custody (*e.g.,* the damage occurred before the passenger checked the wheelchair, scooter, other mobility aid, or assistive device; the damage occurred after you returned the wheelchair, scooter, other mobility aid, or assistive device to the passenger) or that the passenger's claim is false or fraudulent.

(2) The presumption of a violation in this paragraph (a) cannot be overcome by demonstrating that the mishandling of a checked wheelchair, scooter, other mobility aid, or other assistive device is the result of ''an act of God'' or other circumstances beyond the control of the airline.

(b) When you become aware that a passenger's wheelchair or scooter has been mishandled (*i.e.,* your personnel notices that the wheelchair or assistive device has been mishandled or the passenger notifies airline personnel of the mishandling of the wheelchair or assistive device, whichever occurs first), you must immediately notify the impacted passenger in writing of his or her rights to file a claim with the carrier, to receive a loaner wheelchair or scooter from the carrier with certain customizations described in paragraph (e) of this section, to choose a preferred vendor for repairs or replacement of the device, and to have a Complaints Resolution Official (CRO) available and be provided information on how to contact the CRO. You must provide this notification in an accessible format for individuals with disabilities.

(c)(1) When a passenger's checked wheelchair or scooter has been delayed

while in your custody, you must ensure that the device is transported to the passenger's final destination within 24 hours of the passenger's arrival for domestic flights and short international flights between the United States and a foreign point that is 12 hours or less in duration and within 30 hours of the passenger's arrival for long international flights between the United States and a foreign point that is more than 12 hours in duration. You must transport the delayed device by whatever means are available to safely do so.

(2) You must provide passengers a choice between picking up the delayed wheelchair or scooter at the passenger's final destination airport or having the delayed wheelchair or scooter delivered to a reasonable location requested by the passenger, such as the passenger's home or hotel. Depending on the passenger's choice, the delayed wheelchair or scooter is considered to be provided to the passenger either when the passenger or another person authorized to act on behalf of the passenger picks up the delayed wheelchair or scooter at his or her destination airport or when you deliver the delayed wheelchair or scooter to the passenger or another person authorized to act on behalf of the passenger at a reasonable location requested by the passenger, such as the passenger's home or hotel.

(3) If a passenger files a claim with you for a delayed wheelchair or scooter, you must provide them updates when there is a status change for the delayed device.

(4) In consultation with disability rights organizations, you must establish and provide safe and adequate seating accommodations at the airport to be used by individuals with disabilities who are waiting for delayed personal wheelchairs or scooters or waiting for loaner wheelchairs or scooters after a passenger's wheelchair or scooter is mishandled by you and cannot be promptly returned.

(5) You must reimburse passengers for the cost(s) of any transportation to or from the airport that the passenger incurred as a direct result of you delaying the passenger's wheelchair or scooter. You may require passengers to submit documentation that substantiates the cost(s), such as receipts or invoices, to receive reimbursement.

(d) When a passenger's checked wheelchair or scooter has been lost, damaged, or pilfered while in your custody, you must:

(1) Provide the passenger a reasonable timeframe to inspect the wheelchair or scooter and to file a claim with the carrier for the mishandling;

(2) Provide the passenger the following options if repair or replacement is needed:

(i) The passenger may file a claim with you and elect for the carrier to handle the repair or replacement of the wheelchair or scooter. If the passenger selects this option, you must promptly repair or replace the wheelchair or scooter, with a device of equivalent or greater function and safety, and pay the cost of repair or replacement; or

(ii) The passenger may file a claim with you and elect to use the passenger's preferred vendor to repair or replace the wheelchair or scooter. If the passenger selects this option, you are responsible for promptly transporting the passenger's wheelchair or scooter to the passenger's preferred vendor, unless the passenger has indicated that he or she will arrange for the transport themselves, and for directly paying the cost of transport and repair or replacement, with a device of equivalent or greater function and safety; and

(3) Promptly review all claims received within a reasonable time of the repaired or replaced wheelchair or scooter being returned to the passenger alleging that the provided repairs were not sufficient. If the passenger's claim is warranted and the initial repairs were insufficient, then you must promptly repair or replace the device to the passenger's satisfaction.

(e) While the passenger is waiting for his or her mishandled personal wheelchair or scooter to be returned, repaired, or replaced, you must use your best efforts to work with the passenger and to provide an adequate loaner wheelchair or scooter that meets the passenger's functional, mobility-related and safety-related needs, to the maximum extent possible. You must pay for the cost of the loaner wheelchair or scooter. If the loaner wheelchair or scooter you offer does not meet the passenger's functional and safety-related needs as well as the passenger's existing device, the passenger may find and secure an alternative loaner wheelchair or scooter that is better than the one you offered, and you must reimburse the passenger for the cost of that loaner within 30 days of the passenger's request. You may require the passenger to provide documentation substantiating the cost, such as receipts or invoices, to receive the reimbursement.

(f) The liability limits for carriers under the Montreal Convention will apply if the wheelchair or scooter mishandling occurs on an international flight.

■ 10. Section 382.132 is added to read as follows:

§ 382.132 What requirements apply when a passenger who uses a wheelchair or scooter cannot purchase a certain flight because his or her wheelchair or scooter will not fit in the cabin or cargo compartment of the aircraft for that flight?

(a) As part of your obligation under § 382.11 to not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, to the extent a passenger who uses a wheelchair or scooter cannot book his or her preferred flight because his or her wheelchair or scooter cannot fit in the cabin or cargo compartment of the aircraft of the preferred flight, and the passenger must book a more expensive flight that can accommodate the passenger's wheelchair or scooter, you must, upon request, reimburse the passenger the difference between the more expensive flight the passenger purchased and had to take and the preferred flight that the passenger would have purchased and taken if his or her wheelchair or scooter had been able to fit.

(b) As a condition for issuing reimbursements in paragraph (a) of this section, you may require the following from passengers with disabilities:

(1) The preferred flight and the more expensive flight are on the same airline;

(2) The preferred flight and the more expensive flight are on the same day;

(3) The preferred flight and the more expensive flight have the same origin and destination;

(4) Reasonable documentation to verify: the dimensions of the passenger's wheelchair or scooter; the cost of the passenger's preferred flight that could not accommodate the passenger's wheelchair or scooter; and the cost of the more expensive flight the passenger purchased and had to take.

(c) You must provide the reimbursement required by paragraph (a) of this section within 30 days of receiving a request and the reasonable documentation permitted in paragraph (b) of this section, if you require such documentation.

(d) You must disclose on your website accurate information on the documentation you require from the passenger to support a reimbursement claim.

Subpart J—Training and Administrative Provisions

■ 11. Revise § 382.141 to read as follows:

§ 382.141 What training are carriers required to provide for their personnel (*i.e.,* employees and contractors)?

(a) As a carrier that operates aircraft with 19 or more passenger seats, you must ensure training, meeting the requirements of this paragraph, for all personnel who interact with the traveling public or who handle passengers' assistive devices, as appropriate to the duties of each employee or contractor.

(1) *General.* You must ensure training to proficiency concerning:

(i) The requirements of this part and other applicable Federal regulations affecting the provision of air travel to passengers with a disability;

(ii) Your procedures, consistent with this part, concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability; and

(iii) Your procedures that safeguard the safety and dignity of passengers with disabilities when providing service required under this part.

(2) *Communication.* You must ensure employees and contractors who interact with the traveling public are trained with respect to awareness of different types of disabilities, including how to distinguish among the differing abilities of individuals with disabilities.

(i) You must ensure such employees and contractors are trained on appropriate ways to communicate and interact with passengers with disabilities, including persons with physical, sensory, speech, mental, intellectual, or emotional disabilities (*e.g.,* communicating directly with the individual with a disability instead of to the travel companion/interpreter).

(ii) You must also ensure such employees and contractors are trained to recognize requests for effective communication accommodation from individuals who have disabilities impacting communication (*e.g.,* hearing or vision impaired individuals, non-verbal individuals), and to use the most common methods for communicating with these individuals that are readily available, such as writing notes or taking care to enunciate clearly, for example. Training in sign language is not required. You must also train these employees to recognize requests for communication accommodations from deaf-blind passengers and to use established means of communicating with these passengers when they are available, such as passing out Braille cards if you have them, reading an information sheet that a passenger provides, or communicating with a passenger through an interpreter, for example.

(3) *Physical assistance.* You must ensure that employees and contractors who provide physical assistance to passengers with disabilities who use wheelchairs or scooters are trained in the matters listed in paragraphs (a)(1) and (2) of this section, and the following, as appropriate to the duties of each person:

(i) Hands-on training concerning safe and dignified physical assistance, including: transfers to and from personal or airport wheelchairs, aisle chairs, and aircraft seats; proper lifting techniques to safeguard passengers; how to troubleshoot common challenges in providing physical assistance; and proper use of equipment used to physically assist passengers with disabilities; and

(ii) Other training concerning the collecting and sharing of passenger information, such as Special Service Request (SSR) codes, needed to ensure safe, dignified, and prompt physical assistance, and effective communications with passengers with mobility disabilities, or their companion if direct communication with the individual with a disability is not possible.

(iii) As part of this training, the employees and contractors must be able to successfully demonstrate their knowledge on the matters listed in paragraphs (a)(3)(i) and (ii) of this section (*e.g.,* competency assessments or certification exams).

(4) *Handling of wheelchairs and scooters.* You must ensure that employees and contractors who handle passengers' wheelchairs or scooters are trained in the matters listed in paragraphs (a)(1) and (2) of this section, and the following, as appropriate to the duties of each person:

(i) Hands-on training concerning common types of wheelchairs and scooters and their features, airport and airline equipment used to load and unload wheelchairs and scooters, and methods for safely moving and stowing wheelchairs, including lifting techniques, wheelchair disassembly, reconfiguration, and reassembly, and securement in the cargo compartment of the aircraft; and

(ii) Other training concerning the collecting and sharing of information regarding a passenger's wheelchair or scooter, including using any airline wheelchair handling form(s) that may exist, to ensure the safe and proper handling of such assistive devices, and effective communications with passengers with mobility disabilities, or their companion if direct communication with the individual with a disability is not possible.

(iii) As part of this training, the employees and contractors must be able to successfully demonstrate their knowledge on the matters listed in paragraphs (a)(4)(i) and (ii) of this section (*e.g.,* competency assessments or certification exams).

(5) *Consulting with disability rights organizations.* You must consult with organizations representing individuals with disabilities in your home country when developing your training program and your policies and procedures. When making changes to such training programs and related policies and procedures that will have a significant impact on assistance provided to individuals with disabilities, you must consult with organizations representing individuals with disabilities who would be affected by those changes. If such organizations are not available in your home country, you must consult with individuals with disabilities and/or international organizations representing individuals with disabilities.

(6) *Training frequency.* You must ensure that all personnel who are required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee and contractor, as needed to maintain proficiency. The training program must describe how proficiency will be maintained.

(i) All personnel who provide physical assistance to passengers with disabilities must receive initial training described in paragraph (a)(3) of this section by June 17, 2026, and at least once every twelve months thereafter. All personnel who provide physical assistance to passengers with disabilities hired after June 17, 2026, must receive initial training described in paragraph (a)(3) of this section prior to assuming their duties and at least once every twelve months thereafter.

(ii) All personnel who handle passengers' wheelchairs or scooters must receive initial training described in paragraph (a)(4) of this section by June 17, 2026, and at least once every twelve months thereafter. All personnel who handle passengers' wheelchairs or scooters hired after June 17, 2026, must receive initial training described in paragraph (a)(4) of this section prior to assuming their duties and at least once every twelve months thereafter.

(iii) All other personnel must receive training prior to assuming their duties and at least once every three years thereafter.

(7) *Contractors.* You must provide, or ensure that your contractors receive, training concerning travel by passengers

with disabilities. This training is required only for those contractors who interact directly with the traveling public or who handle passengers' assistive devices, and it must be tailored to the employees' functions. Training for contractors must meet the requirements of paragraphs (a)(1) through (6) of this section.

(8) *Complaint Resolution Officials (CROs).* The employees you designate as CROs, for purposes of § 382.151 of this part, must receive training concerning the requirements of this part, including the training described in paragraphs (a)(3) and (4) of this section and the duties of a CRO prior to assuming their duties as a CRO and at least once every twelve months thereafter.

(b) If you are a carrier that operates only aircraft with fewer than 19 passenger seats, you must ensure that your employees and contractors who directly interact with the traveling public are trained, as appropriate to their duties, to ensure that they are familiar with the matters listed in paragraph (a)(1) of this section, as well as to ensure they are knowledgeable on how to communicate with individuals with differing disabilities, how to physically assist individuals with mobility disabilities, and how to properly handle passengers' wheelchairs and scooters.

Issued this 12th day of December, 2024, in Washington, DC.

Peter Paul Montgomery Buttigieg,

Secretary.

[FR Doc. 2024–29731 Filed 12–16–24; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 89 Tuesday,
No. 242 December 17, 2024

Part VI

Small Business Administration

13 CFR Parts 121, 124, 125, et al.
HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, 126, 127, 128, 134

[Docket ID SBA–2024–0007]

RIN 3245–AH68

HUBZone Program Updates and Clarifications, and Clarifications to Other Small Business Programs

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) amends its regulations governing the Historically Underutilized Business Zone (HUBZone) Program to clarify certain policies. In 2019, SBA published a comprehensive revision to the HUBZone Program regulations, which implemented changes intended to make the HUBZone Program more efficient and effective. This rule clarifies and improves policies surrounding some of those changes. In particular, the rule requires any certified HUBZone small business to be eligible as of the date of offer for any HUBZone contract. The rule also makes several changes to SBA's size and 8(a) Business Development (BD) regulations, as well as some technical changes to the Women-Owned Small Business (WOSB) and Veteran Small Business Certification (VetCert) programs. Of note, the rule deletes the program specific recertification requirements contained separately in SBA's size, 8(a) BD, HUBZone, WOSB, and VetCert and moves them to a new section that covers all size and status recertification requirements. This should ensure that the size and status requirements will be uniformly applied.

DATES: This rule is effective on January 16, 2025.

FOR FURTHER INFORMATION CONTACT: Alison Amann, Chief HUBZone Counsel, Office of General Counsel, (202) 205–6841, *alison.amann@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 23, 2024, SBA published in the **Federal Register** a proposed rule that primarily sought to amend the regulations relating to SBA's HUBZone program, but also proposed changes to SBA's size regulations and SBA's other small business contracting programs. 89 FR 68274.

The proposed rule first intended to clarify and amend several HUBZone regulations that were implemented in the November 26, 2019, final rule that was the first comprehensive revision of the HUBZone Program regulations since the program's implementation more than 20 years ago. *See* 87 FR 68274. In the time since SBA published the comprehensive revision, the Office of the HUBZone Program has received questions and information that prompted refinement and clarification of policies contained in that revision, which SBA published in ''Frequently Asked Questions'' in February 2020 and in subsequent updates. The proposed rule sought to incorporate some of those clarifications and make other refinements in the HUBZone regulations. This rule finalizes revisions to the HUBZone regulations, including requiring HUBZone firms to be eligible on the date of offer for a HUBZone contract and relieving the burden of annual recertification by moving to a triennial recertification requirement. In addition, this rule clarifies policies related to ''Governor-designated covered areas,'' which were authorized by the NDAA 2018 and implemented through a direct final rule published by SBA on November 15, 2019 (84 FR 62447), and makes several changes to definitions pertinent to the HUBZone program.

This final rule also makes several changes to SBA's size and 8(a) business development (BD) regulations, as well as some technical changes to the women-owned small business (WOSB) and the Veteran Small Business Certification (VetCert) programs. Of note, the rule deletes the program specific recertification requirements contained separately in SBA's size, 8(a) BD, HUBZone, WOSB, and VetCert and moves them to a new section that covers all size and status recertification requirements. Currently, there is some language contained in the program specific recertification rules that is not identical in each of the programs. This has caused some confusion as to whether SBA intended the rules to be different in certain cases. That was not SBA's intent. Moving all size and recertification to new § 125.12 should alleviate any confusion between the different programs and ensure that the size and status requirements will be uniformly applied.

During the proposed rule's 45-day comment period, SBA timely received over 650 comments from 261 commenters, with a high percentage of commenters favoring the proposed changes. A substantial number of commenters applauded SBA's effort to clarify and address ambiguities contained in the current rules. For the most part, the comments supported the substantive changes proposed by SBA.

II. Section-by-Section Analysis

Sections 121.103(a)(3), 124.106(h), 127.202(h) and 128.203(j)(6)

SBA proposed to amend its rules on affiliation in the size regulations and control in the 8(a) BD, WOSB and VetCert program regulations regarding negative control. Specifically, the proposed rule made the negative-control rules consistent across SBA's various programs. The negative control provision states that a concern may be deemed controlled by, and therefore affiliated with, a minority shareholder that has the ability to prevent a quorum or otherwise block action by the board of directors or shareholders. The rule does not include any specific exceptions, though some have developed through caselaw at SBA's Office of Hearings and Appeals (OHA). *See, e.g., Southern Contracting Solutions III, LLC,* SBA No. SIZ–5956 (Aug. 30, 2018).

The proposed rule amended § 121.103(a)(3) (for affiliation relating to size), § 124.106(h) (for control in the 8(a) BD program) and § 127.202(h) (for control in the WOSB program) by adding language currently contained in the VetCert rules that developed from OHA case law to clarify that there are certain ''extraordinary circumstances'' under which a minority shareholder may have some decision-making authority without a finding of negative control. Specifically, SBA will not find that a lack of control exists where a qualifying individual or business does not have the unilateral power and authority to make decisions regarding: (1) adding a new equity stakeholder; (2) dissolution of the company; (3) sale of the company or all assets of the company; (4) the merger of the company; (5) the company declaring bankruptcy; and (6) amendment of the company's governance documents to remove the shareholder's authority to block any of (1) through (5). These exceptions to negative control are being implemented to promote consistency with other SBA contracting programs. Finally, since the current VetCert regulations have only the first five exceptions for control and the proposed rule also added six to the size, 8(a) BD and WOSB regulations, the proposed rule added that same sixth exception to the VetCert regulations in a new § 128.203(j)(6).

SBA received ten comments in response to the proposed changes regarding extraordinary circumstances. All of the commenters agreed with identifying ''extraordinary circumstances'' under which a minority shareholder may have some decision-

making authority without a finding of affiliation or negative control. Several commenters, however, believed that there should also be some sort of a catch-all to allow similar treatment for another extraordinary circumstance not specifically identified. One commenter recommended that SBA adopt language stated in OHA size appeal cases that super majority provisions crafted to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses should be permitted. *See* Size Appeal of S. Contracting Sols. III, LLC, SBA No. SIZ–5956 (2018) (citing Size Appeal of EA Eng'g., Sci. & Tech., Inc., SBA No. SIZ–4973 (2008), Size Appeal of Carntribe-Clement 8AJV #1, LLC, SBA No. SIZ–5357 (2012)). SBA agrees and has adopted this catch all language in this final rule.

One commenter recommended that the extraordinary circumstance identified as adding ''a new equity stakeholder'' should be broadened to also allow increasing the investment amount of an equity stakeholder. Similarly, another commenter recommended that SBA add a separate extraordinary circumstance allowing issuing additional capital stock. SBA adopts the first recommendation in this final rule, but believes the second is unnecessary since that should be covered in a provision which allows adding a new equity stakeholder or increasing the investment amount of an equity stakeholder.

Section 121.103(h)

Section 121.103(h)(3) sets forth SBA's ''ostensible subcontractor'' rule, which may find a prime contractor ineligible for the award of any small business contract or order where a subcontractor that is not similarly situated (as that term is defined in § 125.1) performs primary and vital requirements of a contract, order, or agreement, or where the prime contractor is unusually reliant on such a subcontractor. Prior to this change, the regulatory text provided that a contractor and its ostensible subcontractor are treated as joint venturers for size determination purposes, and as long as each concern is small under the size standard corresponding to the relevant North American Industry Classification System (NAICS) code or the prime contractor is small and the subcontractor is its SBA-approved mentor, the arrangement will qualify as a small business. The proposed rule sought to clarify SBA's intent, specifically in the context of a subcontractor that is an SBA-approved mentor of the prime contractor. There was some confusion that because a prime-subcontractor relationship was treated ''as a joint venture'', then that relationship would automatically be acceptable if the subcontractor were the mentor of the prime contractor. That was not what SBA intended. SBA intended to allow the relationship to qualify as a small business only if all the joint venture requirements were met. That would mean that the protégé and mentor must have an underlying joint venture agreement that meets the requirements of § 125.8(b), the protégé will direct and have ultimate responsibility for the contract, and the performance of work requirements set forth in § 125.8(c) will be met. In a prime-subcontractor relationship, those requirements are not present and SBA would aggregate the revenues/employees of such ''joint ventures'' in determining size. The proposed rule simplified § 121.103(h) by eliminating the reference to a joint venture and instead specified that an offeror is ineligible as a small business concern, an 8(a) small business concern, a certified HUBZone small business concern, a WOSB/EDWOSB, or a VO/SDVO small business concern where SBA determines there to be an ostensible subcontractor relationship. The proposed rule also added a new § 121.103(h)(3)(v) that provided that a joint venture offeror is ineligible as a small business concern, an 8(a) small business concern, a certified HUBZone small business concern, a WOSB/EDWOSB concern, or a VO/SDVO small business concern where SBA determines that the managing joint venture partner will not perform 40% of the work to be performed by the joint venture, where a joint venture partner that is not similarly situated to the managing venturer performs primary and vital requirements of a contract, or of an order, or where the managing venturer is unusually reliant on such a joint venture partner.

SBA received 14 comments in response to proposed § 121.103(h). Twelve commenters supported deleting the joint venture language from the introductory language of § 121.103(h)(3). Two commenters opposed the language in proposed § 121.103(h)(3)(v) that would find a joint venture to be ineligible where a joint venture partner that is not similarly situated to the managing venturer performs primary and vital requirements of a contract, or where the managing venturer is unusually reliant on such a joint venture partner. These commenters noted that a primary reason why companies joint venture is because the managing member is not able to perform the contract by itself and may not be able to perform a significant amount of the primary and vital work to be done under the contract. They believed that finding a joint venture to be ineligible merely because a non-similarly situated partner was performing primary and vital work is contrary to the entire purpose of a joint venture. SBA agrees and has amended the regulatory text in this final rule to eliminate the language finding a joint venture to be ineligible where a joint venture partner that is not similarly situated to the managing venturer performs primary and vital requirements of a contract, or of an order, or where the managing venturer is unusually reliant on such a joint venture partner.

A joint venture is not only permissible but encouraged where a concern lacks the necessary capacity to perform a contract on its own. It would be contradictory to say that a joint venture is permissible where the managing member cannot perform the contract by itself but then say it is ineligible if a non-managing member partner was performing primary and vital work.

The proposed rule also made a corresponding change to § 121.702(c)(7) for the SBIR program. That change provided that a concern with an other than small ostensible subcontractor cannot be considered a small business concern for SBIR and STTR awards. SBA received one comment regarding proposed § 121.702(c)(7). The commenter recommended that SBA add language to § 121.702(c)(7) to safeguard the SBIR and STTR programs from foreign capture. SBA believes that the language of proposed § 121.702(c)(7)(iii) provides the necessary safeguards. The commenter references an OHA size appeal where an ostensible subcontractor was a foreign company. *See* Size Appeal of NFRL LLC, SBA No. SIZ–6174 (28 September 2022). In that case, OHA found the prime ineligible because the ostensible subcontractor did not also meet the ownership and control requirements of § 121.702(a) and (b). Specifically, because the ostensible subcontractor was not more than 50% directly owned and controlled by one or more individuals who are citizens or permanent resident aliens of the United States the relationship, treated as a joint venture under the regulations in place at that time, was ineligible. In eliminating the joint venture verbiage from the ostensible subcontractor SBIR rule, SBA replaced it with language specifically stating that the prime and any small

business ostensible subcontractor both must comply individually with the ownership and control requirements. As such, SBA adopts the proposed language without revision in this final rule.

Section 121.104

Section 121.104 defines the term annual receipts to mean all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. It goes on to state that generally, receipts are considered ''total income'' plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms. The section also provides that Federal income tax must be used to determine the size status of a concern. There has been some confusion as to whether SBA is restricted in all circumstances to examining only a concern's tax returns or whether SBA may look at other information if it appears or there is other information suggesting that the tax returns do not adequately capture a concern's total revenue. The proposed rule provided that SBA will always consider a concern's tax returns, but may also consider other relevant information in appropriate circumstances in determining whether the concern qualifies as small.

SBA received seven comments regarding proposed § 121.104, five of which opposed the proposed language. Commenters believed that the proposed language afforded SBA limitless discretion to go outside of a firm's tax returns and was overly vague. One commenter noted that financial statements may not reflect revenue the same way that it is reported for tax purposes. The commenter believed that it would be unfair to include revenue identified on financial statements that were legally excluded on the firm's tax returns. SBA agrees. The final rule clarifies that SBA will consider a firm's tax returns in every case and that SBA will generally rely solely on those tax returns. The final rule also specifies that where a concern may legally exclude certain revenue for tax purposes, SBA will not include that revenue in its size determination analysis. However, the final rule specifies that SBA may consider other relevant information beyond the submitted tax returns where there is reasonable basis to believe the tax filings are false.

Section 121.404

SBA proposed to simplify and reorganize § 121.404, which addresses the date used to determine size for size certifications and determinations. The proposed changes sought to clarify the current rules and make them easier to understand and apply. In addition to these clarifications, SBA proposed substantive changes to the rules regarding size recertification and proposed to remove paragraph (g) on size recertification and relocate that paragraph to new section 125.12, which addresses size and small business program status recertification.

Generally, a concern (including its affiliates) must qualify as small under the NAICS code assigned to a contract as of the date the concern submits a self-certification that it is small to the procuring activity as part of its initial offer or response which includes price. Once awarded a contract as a small business, a concern is generally considered to be a small business throughout the life of that contract. For orders and agreements issued under multiple award contracts, the date that size is determined depends on whether the underlying multiple award contract was awarded on an unrestricted basis or whether it was set aside or reserved for small business (*i.e.,* small business set-aside, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned/economically disadvantaged women-owned small business).

Where an order or agreement is to be set aside for small business under an unrestricted multiple award contract, size is determined as of the date of initial offer (or other formal response to a solicitation), including price, for each order or agreement placed against the multiple award contract. In that scenario, the order or agreement is the first time that size status is important to eligibility. That is the first time that only some contract holders will be eligible to compete for the order or agreement while others will be excluded from competition because of their size status. SBA never intended to allow a firm's self-certification for the underlying unrestricted multiple award contract to control whether a firm is small at the time an order or agreement is set-aside for small business years after the multiple award contract was awarded.

Where the underlying multiple award contract was set aside or reserved for small business, size status will generally flow down from the underlying contract to the order or agreement, unless recertification is requested by a contracting officer with respect to an agreement or order. As such, size status for an order or agreement under a multiple award contract that itself was set aside or reserved for small business is determined as of the date of initial offer, including price, for the multiple award contract, unless size recertification is requested by the contracting officer in connection with a specific order or agreement.

SBA also proposed to clarify that where a contracting officer requests size and/or status recertification with respect to a specific order or agreement, size/status will be determined as of the date of initial offer (or other formal response to a solicitation), including price, for that specific order or agreement only. The requirement to recertify applies only to the order or agreement for which a contracting officer requested recertification. The recertification does not apply to the underlying contract. Where an initially-small contract holder has naturally grown to be other than small and could not recertify as small for a specific order or agreement for which a contracting officer requested recertification, it may continue to qualify as small for other orders or agreements where a contracting officer does not request recertification. Similarly, where an initially-eligible 8(a), HUBZone, WOSB or SDVOSB contract holder on an 8(a), HUBZone, WOSB or SDVOSB set-aside or reserve cannot recertify its status for a specific order or agreement for which a contracting officer requested recertification, it may continue to qualify as eligible for other competitively awarded orders or agreements where a contracting officer does not request recertification.

If size recertification is triggered by a merger, sale, or acquisition, or because it is a long-term contract in the fifth year of performance, size will be determined as of the date of the merger, sale, or acquisition, or the date of the size recertification in the case of a recertification in the fifth year of a long-term contract. The impact of a disqualifying recertification, the events that require recertification, and the timing of recertification, are discussed in detail in 125.12, which is a new proposed section of SBA's regulations.

SBA received 25 comments in response to the proposed changes to § 121.404. Most of the comments responded to the effect of a disqualifying recertification. As noted above, the proposed rule moved regulatory provisions regarding recertification from § 121.404(g) to a new § 125.12. The effect of disqualifying recertifications is addressed in new

§ 125.12. As such, the comments to § 121.404 pertaining to the effect of a disqualifying recertification will be addressed with other comments to § 125.12. Several commenters supported SBA's efforts to simplify and clarify when size status is determined. Three commenters also supported SBA's clarification that where a contracting officer requests size recertification with respect to a specific order, size is determined only with respect to that order. This clarification allows a contract holder that has grown to be other than small and cannot recertify as small for a specific order for which a contracting officer requested recertification to continue to qualify as small for other orders issued under the contract where a contracting officer does not request recertification. SBA adopts those provisions as final in this rule.

Three commenters disagreed with the exception set forth in proposed § 121.404(c)(4)(i) stating that for orders or BPAs to be placed against the Federal Supply Schedule (FSS), size is determined as of the date the business concern submits its initial offer, which includes price, for the FSS contract and not with respect to each order set aside for small business under the FSS. The commenters noted that the FSS is an unrestricted contract and size is not relevant to the award of the underlying contract.

They recommended that the general rule applicable to set-aside orders under an unrestricted multiple award contract (*i.e.,* that size status for each such order placed against the multiple award contract be determined as of the date a business concern submits its initial offer which includes price for the order) should apply similarly to the FSS. The commenters believe that this exception does not adequately serve the interests of the small business community. SBA notes that GSA has the statutory authority to establish FSS contracts and the procedures used to order under them. As such, this rule adopts the proposed language as final.

Section 121.1001

Section 121.1001 identifies who may initiate a size protest or request a formal size determination in different instances. Paragraph 121.1001(b)(2)(ii) identifies who may request a formal size determination where SBA cannot verify that an 8(a) Participant is small for a specific sole source or competitive 8(a) contract. There have been a few cases where SBA initially determined that a Participant qualified as small for a sole source 8(a) contract, but later received information that questioned that determination. Under a strict reading of § 121.1001(b)(2)(ii), SBA could not then request a formal size determination because the wording of § 121.1001(b)(2)(ii) authorized such a request only where SBA ''cannot verify the eligibility of the apparent successful offeror because SBA finds the concern to be other than small.'' Since verification, albeit initial verification only, had already occurred, some have questioned whether SBA could request a formal size determination at all in that context. SBA notes that it was never SBA's intent to prohibit further analysis of an 8(a) Participant's size eligibility when new information becomes available to SBA that questions the firm's eligibility at any point prior to award. SBA seeks to ensure that only firms that qualify as small receive 8(a) contracts. The proposed rule added a new § 121.1001(b)(2)(iii) to specifically authorize SBA to request a formal size determination where SBA initially verified the eligibility of an 8(a) Participant for the award of an 8(a) contract but then subsequently receives specific information that the Participant may be other than small and consequently ineligible. SBA received two comments on this proposal, both supporting this clarification. One commenter recommended that SBA clarify that the request for a formal size determination contemplated here by SBA occurs prior to the award of the 8(a) contract at issue. SBA agrees and has made minor wording changes to clarify its intent in this rule.

SBA also proposed to add a new § 121.1001(b)(12) to specifically authorize requests for formal size determinations relating to size recertifications required by § 125.12. Section 125.12 requires a concern to recertify its size when there is a merger, acquisition, or sale and prior to the sixth year and every option thereafter of a long-term contract. Although SBA and the relevant contracting officer may file a size protest before or after the award of a contract (*see* § 121.1004(b)), the regulations do not currently specifically authorize a protest or a request for a formal size determination in connection with a size recertification. More importantly, there currently is no mechanism to allow a protest or request for a formal size determination from another interested small business concern who believes that a size recertification is incorrect. For example, on a multiple award contract, if after a merger or acquisition a concern re-certifies itself to be small, another contract holder on that multiple award contract could not currently challenge that recertification. Because this rule will render a concern ineligible for orders set aside for small business or set aside for a specific type of small business under a multiple award contract where the concern submits a disqualifying recertification (*see* § 125.12 below), SBA believes that other contract holders should have the ability to question a size recertification. The proposed rule specifically authorized the contracting officer, the relevant SBA program manager, or the Associate General Counsel for Procurement Law to request a formal size determination. The relevant SBA program manager is that individual overseeing the program relating to the contract at issue. For an 8(a) contract, that would be the Associate Administrator for Business Development; for a HUBZone contract, that would be the Director of HUBZone; and for a small business set-aside, WOSB/EDWOSB or SDVOSB contract, that would be the Director of Government Contracting. The proposed rule also specified that in connection with a size recertification relating to a multiple award contract, any contract holder on that multiple award contract could request a formal size determination in addition to the contracting officer, the relevant SBA program manager, or the Associate General Counsel for Procurement Law. As with a size protest, a request for a formal size determination questioning the size of a concern after its size recertification must be sufficiently specific to provide reasonable notice as to the grounds upon which the recertifying concern's size is questioned. SBA received five comments in response to proposed § 121.1001(b)(12). All five commenters supported the SBA's proposal to allow a mechanism to challenge a size recertification. One commenter, however, recommended that the challenge be a size protest in § 121.1001(a) as opposed to a request for a formal size determination in § 121.1001(b). The commenter believed that without this clarification, it is unclear if/whether the protest time limits apply. The final rule adopts this recommendation and moves proposed §§ 121.1001(b)(12) and (13) to a new § 121.1001(a)(11). In moving the proposed authority from a request from a formal size determination to a protest, the final rule eliminates the specific language contained in proposed § 121.1001(b)(13) requiring a challenge to a recertification to be specific. The requirement for specificity applies to all size protests currently. There is no need to repeat that requirement in new § 121.1001(a)(11).

The proposed rule also noted that SBA was considering allowing a size protest in connection with the award of an order issued under a multi-agency multiple award contract where the protest relates to the ostensible subcontractor rule. Whether a large business subcontractor will perform primary and vital requirements or whether a small business prime contractor will be unduly reliant on a large business subcontractor will not be an issue at the time of award of an underlying small business multiple award contract. It is at the order level where undue reliance may become an issue. SBA requested comments on this issue. Three commenters supported the inclusion of such a protest, while two opposed. Two commenters supported the addition of such a provision generally. One commenter noted that § 121.1001(a)(1) already authorized a size protest ''in connection with a particular . . . order.'' The commenter noted that if a protest is currently authorized for an order, then it can relate to any protest ground in SBA's regulations, including one based on the ostensible subcontractor rule. Although the commenter believed it was unnecessary to add language regarding the ostensible subcontractor rule to protests regarding orders, the commenter did not object to such inclusion if SBA thought it was necessary. The commenter also recommended that the language in § 121.1001(a)(1) authorizing a size protest in connection with a particular order be more clearly apparent in a separate paragraph. In response, SBA believes that it is not necessary to add specific language authorizing a protest of an order based on the ostensible subcontractor rule. SBA agrees that the language in § 121.1001(a)(1) authorizing a size protest in connection with a particular order generally allows a protest based on the ostensible subcontractor rule. SBA also agrees that this authority should be identified in a separate paragraph for clarity purposes, and adds a new § 121.1001(a)(10) to do so.

One commenter opposing such a provision believed that it would be difficult for competitors to know whether a contractor intends to use a subcontractor for a particular order since this information is not public or consistently reported, and that this would lead to speculative size protests. As with any size protest, the protest must be specific. If a competitor cannot identify a subcontractor that will perform primary and vital requirements or upon which the protested concern is alleged to be unduly reliant upon, the protest will be dismissed for lack of specific. The other commenter opposing adding specific language authorizing a size protest relating to the ostensible subcontractor rule with respect to an order believed that it would create significant additional work for contracting officers, small business specialists, and small businesses. As noted above, size protests relating to specific orders is already authorized by SBA's regulations and identifying or not identifying a specific ground upon which a protest could be made will not cause any additional burden on contracting officers, SBA or small businesses.

Section 121.1010

Section 121.1010 explains how a concern can become recertified as a small business after receiving an adverse size determination. The proposed rule made slight wording changes to § 121.1010(b) to make clear that size recertification is not required and the prohibition against future self-certification does not apply if the adverse SBA size determination is based solely on a finding of affiliation limited to a particular Government procurement or property sale, such as an ostensible subcontracting relationship or non-compliance with the nonmanufacturer rule. SBA received two comments supporting this provision and no comments opposing it. SBA adopts the proposed language as final in this rule.

Section 124.3

Section 124.3 sets forth the definitions that are important in the 8(a) BD program. Included within this section is the definition of the term Community Development Corporation or CDC. In 1981, Congress enacted the Omnibus Reconciliation Act. Included within Title VI of this Act was § 626(a)(2), codified at 42 U.S.C. 9815(a)(2), which required SBA to ''promulgate regulations to ensure the availability to community development corporations of such programs as shall further the purposes of this subchapter, including programs under section 8(a) of the Small Business Act.'' Pursuant to 42 U.S.C. 9802, a CDC is defined as a non-profit organization responsible to the residents of the area it serves which is receiving financial assistance under 42 U.S.C. 9805, *et seq.* Under 42 U.S.C. 9806 the Secretary of Health and Human Services (HHS) has the authority to provide financial assistance in the form of grants to nonprofit and for-profit community development corporations. The program authorized by 42 U.S.C. 9805, *et seq.* is the Department of Health and Human Services (HHS) Urban and Rural Special Impact Program. In 1998, as part of Community Opportunities, Accountability, and Training and Educational Act of 1998, Public Law 105–285, 202(b)(1), 112 Stat. 2702, 2755 (1998), Congress moved HHS' funding authority for the Urban and Rural Special Impact Program from 42 U.S.C. 9803 to 42 U.S.C. 9921. Thus, after that date CDCs could not receive funding under 42 U.S.C. 9805, *et seq.* CDCs that have been in existence for a long time may still be able to demonstrate that they have received funding under 42 U.S.C. 9805, *et seq.* However, those forming after 1998 could not do so. In order for such a CDC seeking to participate in the 8(a) BD program after that date, SBA has required the CDC to obtain a letter from HHS confirming that the CDC has received funding through the successor program to that authorized by 42 U.S.C. 9805, *et seq.* However, SBA's regulations have not been changed to acknowledge eligibility for a CDC-owned firm through that process. The proposed rule recognized that process.

The proposed rule also made the same change to the definition of the term Community Development Corporation or CDC contained in § 126.103 for the HUBZone program.

SBA received two comments supporting the clarifications for CDC 8(a) and HUBZone eligibility. SBA adopts the proposed language as final in this rule.

Sections 124.105(b), 127.202(d) and 128.202(c)

Sections 124.105(b) (for the 8(a) BD program), 127.202(d) (for the WOSB program), and 128.202(c) (for VetCert program) set forth ownership requirements pertaining to partnerships. The language of the three sections is not consistent. The proposed rule sought to harmonize the provisions so that a firm simultaneously applying to be certified in more than one program must meet the same requirements. SBA does not want possible contradictory determinations based on the same facts. In other words, SBA believes that it would be inappropriate to find that a qualifying individual controls a partnership firm for purposes of one certification program but not to control the same partnership firm for purposes of another certification program. This rule would revise the ownership requirements for partnership to be identical for the 8(a) BD, WOSB and VetCert programs. The final rule provides that in the case of a concern which is a partnership, one or more individuals determined by SBA to be

socially and economically disadvantaged must serve as general partners, with control over all partnership decisions. In addition, at least 51 percent of every class of partnership interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged; and the ownership must be reflected in the concern's partnership agreement.

SBA received four comments supporting the proposed clarifications to create consistency between SBA's various programs, and no comments opposing the changes. SBA adopts the proposed language as final in this rule.

Section 124.105

Section 124.105 sets forth the ownership requirements that an applicant to or Participant in the 8(a) BD program must meet in order to be and remain eligible for the program. Paragraph 124.105(h) provides certain ownership restrictions that are applicable to non-disadvantaged individuals and concerns that seek to have an ownership interest in an applicant or Participant. The proposed rule increased the allowable ownership percentages for certain non-disadvantaged individuals and business concerns (those owning more at least ten percent in other 8(a) Participant and those in the same or similar line of business) from 10 percent to 20 percent in the developmental stage of program participation and from to 20 percent to 30 percent in the transitional stage of program participation.

SBA received five comments supporting the increases in non-disadvantage ownership. Commenters believed that these changes could help 8(a) Participants attract additional partners, offering greater opportunities for growth and development. One commenter supported the increase to 30% in the transitional stage saying that it will facilitate access to capital for 8(a) firms preparing to graduate, enhancing their ability to compete in the open market. That commenter also recommended, however, that SBA increase the percentage to 35% in the transitional stage. SBA does not adopt this recommendation. SBA does not want any one non-disadvantage individual or business entity to unduly benefit from the program. The higher the percentage that SBA allows a non-disadvantaged individual or business to own in multiple 8(a) Participants, the more it appears that non-disadvantaged individuals are benefitting from the program instead of disadvantaged individuals. Similarly, the restriction on ownership by an individual or business in the same or similar line of work as the 8(a) firm is intended to ensure that the disadvantaged individual(s) upon whom 8(a) eligibility was based control the 8(a) Participant. The higher the percentage that SBA allows a non-disadvantaged individual or business in the same or similar line of business to own in an 8(a) firm, the more it appears that the non-disadvantaged individual or business concern is controlling the 8(a) firm. SBA adopts the proposed language as final in this rule.

The proposed rule also aligned the language in § 124.105(f)(1) (for the 8(a) BD program) with that appearing in § 128.202(g) (for the VetCert program) regarding the distribution of profits. There was a slight wording difference in the 8(a) BD and VetCert regulations and the proposed rule made the wording consistent. The proposed rule also added the same language to § 127.201(g) for the WOSB program. SBA received three comments all supporting these proposed changes. Commenters noted that the revision more clearly states how profits should be distributed for the various for-profit entities instead of only referencing corporations, which is the case in the current regulations. SBA adopts the proposed language as final in this rule.

Paragraph (i) sets forth the requirements relating to changes of ownership. Generally, a Participant may change its ownership or business structure so long as one or more disadvantaged individuals own and control it after the change and SBA approves the transaction in writing prior to the change. Section 124.105(i)(2) authorizes three exceptions as to when prior SBA approval of a change of ownership is not needed and provides four examples implementing the change of ownership requirements, one showing when prior SBA approval is required and three showing when it is not. Prior SBA approval is not needed where all non-disadvantaged individual (or entity) owners involved in the change of ownership own no more than a 20 percent interest in the concern both before and after the transaction. To be consistent with the change to § 124.105(h) above, the proposed rule required prior approval only where a non-disadvantaged individual owns more than a 30 percent interest in the 8(a) Participant either before or after the transaction. The proposed rule also added a fourth exception as to when prior SBA approval is not required. Specifically, the proposed rule provided that prior SBA approval is not required where the 8(a) Participant has never received an 8(a) contract. The proposed rule then clarified that where prior approval is not required, the Participant must notify SBA within 60 days of such a change in ownership, or before it submits an offer for an 8(a) contract, whichever occurs first. SBA must be able to determine the continued eligibility of the Participant before it accepts a sole source 8(a) procurement on behalf of or authorizes the award of a competitive 8(a) award to the Participant. Finally, the proposed rule made changes to the examples set forth in § 124.105(i)(2) to reflect the change from 20 percent to 30 percent and added a fifth example highlighting that prior SBA approval is not required where a Participant has never received an 8(a) contract.

SBA received 11 comments regarding the proposed revisions to the change of ownership requirements. The commenters generally supported the proposed revisions. One commenter believed that the exception to prior approval when the Participant has never received an 8(a) contract is an improvement because it reduces the regulatory burden of obtaining prior approval of an ownership change when the 8(a) Participant has not yet received benefits from the program. That commenter also believed that the notification requirement at § 124.105(i)(2)(i)(D)(iii) that requires a Participant to provide notice of the ownership change within 60 days of such a change, or before it submits an offer for an 8(a) contract, whichever occurs first, will serve as a sufficient safeguard to ensure that SBA has the opportunity to analyze ownership changes before a contract award. Two commenters recommended that SBA clarify § 124.105(i)(2)(i)(C) to make clear that an increase of any percentage of ownership by the disadvantaged individual obviates the need for SBA's prior approval, even if it is a small amount. The final rule makes that clarification. One commenter disagreed with allowing a change of ownership without SBA approval where the 8(a) firm has not received an 8(a) contract in all instances. Specifically, the commenter objected to allowing such a change of ownership where the individual(s) or entity upon whom eligibility would no longer own more than 50 percent of the Participant. The commenter noted that if the change in ownership were permitted to take effect without SBA's approval, the Participant could continue to market itself as an eligible 8(a) Participant. Although the proposed rule requires SBA approval before an 8(a) contract award, the commenter thought that the

Participant's self-marketing efforts could allow the Participant to advance far towards an award before contacting SBA and that either the Participant would receive an expedited eligibility review allowing the award to occur or an agency could be left without an eligible Participant and be forced to start the process over again. Particularly in the entity context, the commenter believed that this could allow a newly established NHO or Tribe that has not previously participated in the 8(a) program to acquire a Participant that has not yet received an 8(a) contract and obtain accelerated review of its 8(a) application, and that that review may not be as comprehensive as it would have been in the normal process. In order to alleviate any concern about possible expedited application processing, the final rule amends this provision to allow a change of ownership without SBA approval where the Participant has never received an 8(a) contract and the individual(s) or entity upon whom initial eligibility was based continues to own more than 50% of the Participant.

In order to align the 8(a) BD ownership requirements with those applicable in the WOSB and VetCert programs, SBA proposed to eliminate the requirement contained in § 124.105(k) that SBA consider State community property laws in determining ownership interests when an owner resides in a community property State. SBA received six comments in response to the proposal to eliminate current § 124.105(k). All six comments supported the proposal. Two commenters specifically addressed the statutory requirement that one or more disadvantaged individuals must unconditionally own an 8(a) applicant or Participant. Both believed that eliminating the requirement to consider community property laws would not in any way contradict the unconditional ownership requirement. One commenter also questioned SBA's authority to require transmutation agreements (*i.e.,* agreements between spouses relinquishing some percentage of his or her community property ownership rights in an applicant or Participant), and believed that even if that could be done it is a better policy not to require them since the commenter believed there was no specific statutory requirement for transmutation agreements. SBA adopts the proposed language as final in this rule.

The proposed rule added a new § 124.105(k) to allow a right of first refusal granting a non-disadvantaged individual the contractual right to purchase the ownership interests of a disadvantaged individual without affecting the unconditional nature of ownership, if the terms follow normal commercial practices. This aligns 8(a) ownership requirements with those set forth in the VetCert program. Of course, if those rights are exercised by a non-disadvantaged individual after certification that result in disadvantaged individuals owning less than 51% of the concern, SBA will initiate termination proceedings. The proposed rule added the same provision to § 127.201(b) to conform the WOSB unconditional ownership requirements as well. SBA received four comments supporting this provision. One commenter requested that SBA define what it believes normal commercial practices to be. SBA believes that any definition might inadvertently disallow a practice that could be deemed a normal commercial practice, and that it is better to allow an applicant or Participant to demonstrate to SBA that it has in fact followed normal commercial practices. Another commenter was concerned that a right of first refusal could be tied to allowing a non-disadvantaged individual to unduly benefit from the program. Specifically, the commenter posed a hypothetical where a non-disadvantaged individual owns a business concern and agrees to ''sell'' 51 percent of the business concern to a disadvantaged individual with the proviso that in nine years the disadvantaged individual would sell the 51 percent back to the non-disadvantaged individual through a right of first refusal provision in the corporate documents. SBA believes that such an arrangement would not be a right of first refusal that followed normal commercial practices, but rather a scheme to deceive SBA and allow greater participation in the program by a non-disadvantaged individual than would otherwise be permitted. If SBA were aware of such a right of first refusal provision, it would not approve the application for 8(a) certification. SBA adopts the proposed language as final.

Sections 124.106(e), 127.202(g) and 128.203(h)

Sections 124.106(e) (for the 8(a) BD program), 127.202(g) (for the WOSB program), and 128.203(h) (for VetCert program) address limitations on the involvement of non-qualifying individuals that can affect a business concern's eligibility for participation in the 8(a) BD, WOSB, and VetCert programs based on a qualifying individual's lack of control. Basically, each of these provisions generally prohibit a non-qualifying individual from unduly influencing the day-to-day management and control of qualifying individuals. The language of the three provisions, however, is not entirely consistent. This has led to questions as to whether SBA intended different application of the control requirements for different programs. In order to clear up any confusion, the proposed rule changed the wording of the three provisions to bring them more in line with each other to ensure that the control requirement is consistently applied. For example, the WOSB regulations did not previously contain a provision that generally required a qualifying woman to be the highest compensated individual in the business concern unless the concern demonstrates that the compensation to be received by a non-qualifying woman is commercially reasonable or that the qualifying woman has elected to take lower compensation to benefit the concern. Such a provision was contained previously in both the 8(a) BD and VetCert regulations, and the proposed rule added a similar provision for the WOSB program. In connection with the 8(a) BD program, SBA proposed to change the requirement that an 8(a) Participant must obtain the prior written consent of SBA before changing the compensation paid to the highest-ranking officer to be below that paid to a non-disadvantaged individual to a requirement that the Participant must notify SBA within 30 calendar days of such an occurrence. SBA believes that notification is preferable to prior approval because SBA does not want a Participant to lose an individual with a particular expertise where the approval process is lengthy. SBA would then have to determine that the compensation to be received by the non-disadvantaged individual is commercially reasonable or that the highest-ranking officer has elected to take lower compensation to benefit the Participant before SBA may determine that the Participant is eligible for an 8(a) award. SBA received six comments regarding the proposed changes relating to the involvement of non-qualifying individuals. Three commenters noted that the proposed provisions for the 8(a) program required an 8(a) Participant to notify SBA where the compensation paid to the highest-ranking officer fell below that paid to a non-disadvantaged individual and recommended that the same should apply to the WOSB and VetCert programs also. The final rule adds that same notification requirement to WOSBs/EDWOSBs and SDVOSBs.

Section 124.107

Section 124.107(a) currently provides that an applicant's income tax returns

for each of the two previous tax years must show operating revenues in the primary industry in which the applicant is seeking 8(a) BD certification. The proposed rule revised this provision to require merely that an applicant's income tax returns for each of the two previous tax years must show operating revenues. Revenue on an income tax return may not be aligned by industry or NAICS code and SBA does not seek to deny entry to the 8(a) program to a firm that has performed work in its projected primary industry but that work may not have been properly captured on its tax return. SBA received five comments on this provision, with all of them supporting the change. The commenters believed that the change will make the 8(a) BD program more accessible and remove an unnecessary barrier to entry. One commenter supporting the change noted that it is burdensome for 8(a) applicants to demonstrate ''operating revenues in the primary industry'' on income tax returns, as IRS business activity codes often do not align with NAICS codes. Where NAICS codes and IRS business codes do not align, the commenter stated that applicants have been asked to obtain a letter from their tax preparers to clarify code discrepancies, which adds an unnecessary burden to applicants. SBA adopts the proposed language as final in this rule.

Section 124.107(e) requires that, as a condition to show an 8(a) applicant's potential for success, the applicant or individuals employed by the applicant must hold all requisite licenses if the concern is engaged in an industry requiring professional licensing (*e.g.,* public accountancy, law, professional engineering). Generally, the potential-for-success requirements carry out the requirement in section 8(a)(7)(A) of the Small Business Act, 15 U.S.C. 637(a)(7)(A), that SBA determine that an 8(a) applicant have reasonable prospects for success in competing in the private sector. That same statutory provision, however, requires SBA to determine that with contract, financial, technical, and management support the applicant will be able to perform contracts which may be awarded to it. As such, SBA believes that issues of current responsibility should not prevent an applicant from being eligible for the 8(a) BD program where SBA believes that the business concern will be able to perform contracts awarded to it with certain contract, financial, technical, or management support. Although a business concern applying to the 8(a) BD program that does not have a required professional license may not currently be responsible to be awarded certain 8(a) contracts, as long as SBA determines that the concern would be able to perform such contracts with appropriate support, SBA believes that the concern should be eligible for participation in the 8(a) BD program. SBA proposed to remove the professional-licensing requirement. It is not only inapplicable to most applicants, it also can be overcome before any 8(a) contract opportunity is sought by those concerns to which it applies. SBA received six comments on the proposal to eliminate the license requirement at the time of application. Four commenters supported the removal of the license requirement as it will streamline the application process. Two commenters opposed the proposal, with one believing that eliminating the license requirement will encourage unprepared firms to apply to the 8(a) program and waste limited time in the program. SBA notes that an applicant must generally demonstrate that it has been in business and received revenue for at least two years. In addition, once admitted to the program, a Participant can seek and be awarded any 8(a) contract that a procuring agency believes that it is responsible to perform. SBA believes that applicants know the industry or type of business activity they hope to receive contracts in when they apply to the 8(a) BD program, so eliminating the license requirement will not adversely impact them or the program. Two commenters also recommended requiring an applicant to certify that it will obtain a necessary license in an industry requiring such a license where it does not possess a license at the time of application. SBA dos not believe such a requirement would add anything substantive to the process. Whether the firm certifies that it will obtain a license or not, it must in fact have a license in order for a contracting officer to determine the firm responsible to perform a contract in that industry. The firm could not be awarded a contract without an affirmative finding of responsibility. SBA also notes that there have been times where applicants have disagreed with SBA as to whether a license was required for the type of work the firm sought to perform. Removing the license requirement at the time of application eliminates those disagreements, which may unnecessarily delay the application process and impose a burden on the applicant in demonstrating that a license in fact is not needed in the work that the firm does. SBA adopts the proposed language as final in this rule.

Section 124.108

Section 124.108 sets forth other eligibility requirements that apply to 8(a) applicants and Participants. One of those requirements is that SBA must determine that an applicant or Participant and all of its principals possess good character. The 8(a) BD program is one of several certification programs to help small businesses win Federal contracting awards, but the scope of the 8(a) BD program is different. For the WOSB and VetCert programs, SBA only determines whether a small business applicant is owned and controlled by one or more qualifying individuals. SBA does not look at character or business integrity in determining whether a small business is owned and controlled by qualifying individuals. Similarly, for the HUBZone program, SBA only determines whether the small business applicant is located in and employs residents of a historically underutilized business zone. SBA certification of these qualifications allows the certified small businesses to compete for certain Federal contracts. These are not business development programs. Although SBA determines whether an 8(a) small business applicant is owned and controlled by one or more qualifying individuals, the program is not limited to this certification. Its scope is broader and includes a multi-year business development program with eligibility for specific management and technical assistance from SBA to support the business's successful competition in the marketplace. SBA requires ''good character'' to be admitted to this development program.

SBA proposed to limit the grounds that would serve as an automatic, mandatory bar from participation in the 8(a) BD program based on good character (*i.e.,* either an application denied or possible termination action commenced against a current Participant). The proposed rule amended the lack of business integrity bar to a lack of business integrity as demonstrated by conduct that could be grounds for suspension or debarment. SBA received six comments to this proposal, with three favoring the change and three opposing the change as written. Those favoring the change generally agreed with removing ''possible criminal conduct'' as grounds for declining based on character. The comments opposing the change as written believed that lack of business integrity based solely on conduct that could be grounds for suspension or debarment did not go far enough. They noted that suspension and debarment

should be imposed only in the public interest for the Government's protection and not for purposes of punishment and that mitigating factors or remedial measures could affect a suspension or debarment decision despite a lack of business integrity. They believed that some of the language currently in the regulation should be retained. These comments misunderstand the proposed change. The proposal does not limit the lack of good character requirement to suspension or debarment. When the regulations state that a lack of business integrity that could be grounds for suspension or debarment is needed to find a lack of good character for 8(a) BD purposes, it does not mean to imply that suspension or debarment needs to be imposed before SBA could find a lack of good character. The underlying conduct alone which demonstrates grounds for suspension or debarment is sufficient for SBA to find a lack of good character. In addition, SBA does not believe that adding back language providing that a lack of business integrity can be demonstrated by information related to an indictment or guilty plea, conviction, civil judgment, or settlement would be useful. A demonstrated lack of business integrity in an indictment, guilty plea, conviction, civil judgment, or settlement are all conduct that can be a cause for suspension or debarment actions. Moreover, there are instances in which an indictment, guilty plea, conviction, civil judgment, or settlement has no bearing on business integrity. Given the lack of connection to business integrity, they should not serve as a barrier to program entry. As such, SBA does not believe that the language as proposed needs to be amended and adopts it as final.

SBA will continue to conduct internal checks related to an applicant's business integrity that includes the applicant's criminal history, and consider all factors in evaluating whether an applicant would be a good candidate to participate in the 8(a) BD program. SBA will consider each application individually. This rule does not change business integrity requirements of procuring agency contracting officers or any business integrity evaluations done by them. Procuring agency contracting officers evaluate offerors' responsibility to perform Federal contracts prior to award, a process that can include an evaluation of business integrity.

Sections 124.108(e), 126.200(h), 127.200(h), and 128.201(b)

Sections 124.108(e) (for the 8(a) BD program) and 128.201(b) (for the VetCert program) provide generally that a small business concern is ineligible for certification if the concern or any of its principals has failed to pay significant financial obligations owed to the Federal Government. A similar provision is not currently contained in the WOSB or HUBZone eligibility requirements. SBA proposed to apply that restriction to the WOSB and HUBZone programs as well. To ensure consistency among the programs, SBA also proposed to revise the language in §§ 124.108(e) and 128.201(b) so that the regulatory language applying to all four programs is the same. SBA received two comments supporting these revisions and no comments opposing them. SBA adopts the proposed language in this final rule.

Sections 124.204(d), 126.306(d), 127.304(d), and 128.302

Sections 124.204(d) (for the 8(a) BD program), 126.306(d) (for the HUBZone program), 127.304(d) (for the WOSB program), and 128.302 (for the VetCert program) set forth the date at which at applicant must be eligible for each certification program. The wording of the regulations is not consistent. Section 124.204(d) specifies that an applicant must be eligible as of the date SBA issues a decision. Section 126.306(d) specifies that an applicant must be eligible as of the date it submitted its application and at the time SBA issues a decision. Section 127.304(d) specifies that an applicant must be eligible as of the date it submitted its application and up until the time SBA issues a decision. Section 128.302 details how SBA processes applications for VOSB and SDVOSB certification, but does not specifically address the point at which eligibility is determined. SBA is in the process of establishing a uniform application processing system. That system will allow a firm to simultaneously apply for multiple certifications for which it believes it is eligible. SBA believes that it is critical that eligibility be determined at the same point in time for all certification programs. If, for example, a firm amends a corporate document to come into compliance with a specific control requirement after initially submitting its application for the 8(a) BD program and the WOSB program, the current regulations would support a finding that a qualifying individual did control the applicant for 8(a) BD purposes but did not control the applicant for WOSB purposes. SBA believes that would be an inappropriate result. Therefore, the proposed rule amended each of these sections to require consistent wording that an applicant must be eligible as of the date SBA issues a decision. Although the proposed rule specified that an applicant must be eligible as of the date SBA issues a decision, implicitly a small business must believe that it is eligible at the time it applies for certification for any program. For purposes of applying for HUBZone certification, an applicant must submit payroll records for the four-week period immediately prior to its application date. It would be impossible to require payroll records for some unknown future date. After submitting an application for any program, a concern must immediately notify SBA of any changes that could affect its eligibility and provide information and documents to verify the changes. Four commenters supported these changes without substantive comment. SBA adopts the proposed language as final in this rule.

Section 124.207

Section 124.207 provides that a concern which has been declined for 8(a) BD program participation may submit a new application for admission to the program at any time after 90 days from the date of the Agency's final decision to decline. It also provides that a concern that has been declined three times within 18 months of the date of the first final Agency decision finding the concern ineligible cannot submit a new application for admission to the program until 12 months from the date of the third final Agency decision to decline. SBA proposed to remove that second provision. SBA believes it is unnecessary and does not seek to thwart firms who have made legitimate attempts to overcome deficiencies from again applying to the 8(a) BD program. Five comments supported the elimination of that provision, and no comments opposed it. One commenter, however, also recommended that SBA should eliminate the 90-day waiting period to reapply to the 8(a) program after being declined because it may cause firms to miss contracting opportunities. SBA first notes that prior to 2020, a business concern was required to wait 12 months from the date of SBA's final agency decision to reapply to the 8(a) BD program. SBA changed the waiting period to 90 days in a rulemaking published in the **Federal Register** on October 16, 2020. 85 FR 66146, 66185. The change to 90 days has been enthusiastically supported and has worked well in practice. SBA also notes that SBA works with business concerns during the application process to address deficiencies and allow those concerns to supplement and/or clarify their applications in order to attempt to meet SBA's requirements. As such, SBA does

not believe that further change is necessary and adopts the proposed language as final in this rule.

Sections 124.303(c), 126.503(c), 127.405(f), and 128.310(g)

SBA proposed to add a new provision to § 124.303(c) (for the 8(a) BD program), to § 126.503 (for the HUBZone program), to § 127.405(f) (for the WOSB program), and to § 128.310(g) (for the VetCert program) providing that a firm that is decertified or terminated from one SBA certification program due to the submission of false or misleading information may be removed from SBA's other small business contracting programs. In addition, SBA proposed to authorize SBA to require a firm to enter into an administrative agreement as a condition of admission or re-admission to one of the SBA certification programs. SBA believes that a firm that submits false information to obtain a certification in one program is more likely to submit false information to other SBA programs, and SBA needs a mechanism by which to investigate whether this has occurred and remove non-responsible firms from its programs expeditiously. SBA received 14 comments regarding these proposed changes. Commenters generally supported the provisions, but believed there were inconsistencies in some of the regulatory text. Commenters specifically pointed to the word ''knowingly'' submitting false or misleading information in § 126.900 and stating that the submission of ''inconsistent'' information 126.503(c) would be cause for decertification. SBA agrees that inconsistent or incorrect information that was provided in error should not warrant decertification or termination. SBA is concerned about the knowing submission of false or misleading information. As such, SBA has amended the regulatory text to provide that a firm may be decertified from the HUBZone, WOSB, or VetCert programs where SBA discovers that the firm or its representative knowingly submitted false or misleading information, and a firm that is decertified or terminated from the one SBA program due to the submission of false or misleading information may be decertified from another SBA program. The final rule amends § 127.405(d) (for the WOSB program) instead of adding a new § 127.405(f), and amends to § 128.310(d) (for the VetCert program) instead of adding a new § 128.310(g).

Section 124.503

Section 124.503 addresses how SBA will accept a procurement offered for award through the 8(a) BD program. An agency may offer a sole source procurement to SBA nominating a particular 8(a) Participant for performance based on the firm's self-marketing efforts, or may offer it as an open requirement (*i.e.,* an offering to the program generally, but not in support of a particular 8(a) Participant). SBA's acceptance policies for such offerings are contained in §§ 124.503(c) and (d), respectively. SBA has long recognized the importance of self-marketing in a Participant's business development and continued viability. Thus, where an agency offers a sole source 8(a) procurement in support of a particular Participant as a result of self-marketing and SBA deems it suitable for the program, SBA will normally accept it on behalf of the Participant recommended by the agency as long as specified eligibility criteria are met. This policy was first incorporated in SBA regulations in 1986, 51 FR 36132 at 36149, but had been previously part of the standard operating procedure for the 8(a) BD program.

Section 303 of the Business Opportunity Development Reform Act of 1988 (BODRA), Public Law No. 100–656, tit. III, sec. 303, 102 Stat. 3865 (1988), adopted and expanded SBA's sole source contract acceptance procedures, mandating that SBA shall award a sole source 8(a) contract to the 8(a) firm nominated by the offering agency, provided the following three statutory criteria are met: (i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity; (ii) the award of such contract would be consistent with the Program Participant's business plan; and (iii) the award of the contract would not result in the Program Participant exceeding its 8(a) competitive business mix. This mandate is codified in Section 8(a)(16)(A) of the Small Business Act, 15 U.S.C. 637(a)(16)(A). BODRA also directed SBA to promote—to the maximum extent practicable—the equitable geographic distribution of sole source 8(a) contracts. In response to BODRA, SBA promulgated a rule stating that it would consider, among other things, equitable geographic distribution for open 8(a) sole source contracts offered to the 8(a) BD program. This policy is currently set forth in paragraph 124.503(d)(3).

There has been some confusion as to whether SBA considers equitable contract distribution for a follow-on to an 8(a) procurement offered to SBA on behalf of a specific 8(a) Participant. In SBA's view, the imperative statutory command of Section 8(a)(16)(A) restricts its authority to affirmatively deny a contract offering made on behalf of a specific Participant based on considerations related to the equitable distribution of sole source 8(a) contracts, irrespective of whether the procurement is a ''new'' or repetitive 8(a) requirement. The proposed rules sought to clarify this position by providing that § 124.503(g)(1)(iii) applies only to open sole source 8(a) offerings. SBA received four comments on this proposal, all of which were supportive. As such, the final rule adopts this clarification as proposed.

Sections 124.504(a)

Section 124.504 identifies several reasons why SBA will not accept a particular requirement for award through the 8(a) BD program. One of those reasons is where the procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to award a contract as a small business set-aside, or to use the HUBZone, VetCert, or WOSB programs prior to offering the requirement to SBA for award as an 8(a) contract. SBA proposed to authorize SBA to accept a requirement for the 8(a) program where the AA/BD determines that there is a reasonable basis to cancel the initial solicitation or, if a solicitation had not yet been issued, a reasonable basis for the procuring agency to change its initial clear expression of intent to procure outside the 8(a) BD program. This could happen, for example, where the procuring agency's needs have changed since the initial solicitation was issued such that the solicitation no longer represents its current need, or where appropriations are no longer available for the requirement as anticipated, and the solicitation must be cancelled until a following fiscal year where funds are available. A change in strategy only (*i.e.,* an agency seeks to solicit through the 8(a) BD program instead of through another previously identified program) would never constitute a reasonable basis for SBA to accept the requirement into the 8(a) BD program.

SBA received six comments in response to this clarification, and all six supported the proposal. One commenter recommended that the Associate Administrator for Business Development should consult with the head of the Government Contracting Office before accepting a requirement to ensure that another SBA program is not adversely affected. SBA believes that such coordination should not be required in all instances (*i.e.,* there will be clear instances where the Director of Government Contracting's involvement is not needed), and that coordination

between SBA offices routinely happens when necessary. Nevertheless, in response to the comment, the final rule adds a provision specifying that AA/BD may coordinate with the D/GC, where appropriate, before accepting a requirement into the 8(a) BD program to ensure that another SBA program is not adversely affected.

Section 124.509

Section 124.509 establishes non-8(a) business activity targets (BATs) to ensure that Participants do not develop an unreasonable reliance on 8(a) awards. The reason for requiring a certain percentage of non-8(a) revenue during a Participant's last five years in the 8(a) BD program is to strengthen the Participant's ability to prosper once it exits the program. Congress believed that firms that were totally reliant on the 8(a) BD program for their revenues would be ill prepared to survive as on-going business concerns after leaving the program. As such, Congress required a certain percentage of non-8(a) revenue during the transitional stage of program participation to bolster Participants' continued viability. SBA amended § 124.509 as part of a comprehensive final rule in October 2020. *See* 85 FR 66146, 66189 (Oct. 16, 2020). In that final rule, SBA recognized that a strict prohibition on a Participant receiving new sole source 8(a) contracts should be imposed only where the Participant has not made good faith efforts to meet its applicable non-8(a) business activity target. SBA sought to provide guidance regarding what SBA considers to be good faith efforts in a final rule published in April 2023. *See* 88 FR 26164, 26208 (April 27, 2023). The proposed rule incorporated additional guidance on how SBA considers unsuccessful offers in determining whether good faith efforts have been made. Specifically, in determining the projected revenue that SBA will consider in determining whether one or more unsuccessful offers submitted by a Participant would have given the Participant sufficient revenues to achieve the applicable non-8(a) business activity target, the proposed rule provided that SBA will consider only procurements for which the Participant had reasonable prospects of success. The proposed regulatory text included an example showing how revenue for an unsuccessful offer would be considered in this context. The example explained that where a Participant has never received a contract in excess of a relatively small amount (the example cites $5M), SBA would not count any revenue from an unsuccessful offer for a contract that greatly exceeds what the Participant has previously performed (the example points to a $100M contract). In such a case, the Participant would not have a reasonable prospect of success in submitting an offer for a contract that was substantially higher than anything it had performed in the past. The proposed rule also clarified that only the value of the base year of the contract for which the Participant's offer was unsuccessful would be considered in determining whether the Participant made good faith efforts to achieve its non-8(a) BAT. In this regard, there had been some confusion as to whether the value of the entire contract or only the value of the base year should be considered in determining whether the revenues from that contract, if received, would have brought the Participant back into compliance with its BAT. As explained in the proposed rule, had the Participant been successful and received that contract, pursuant to § 124.509(b)(3) SBA would measure the Participant's compliance with the applicable BAT by comparing the Participant's non-8(a) revenue to its total revenue during the program year just completed. This analysis considers only the non-8(a) revenues received, not the total value of the non-8(a) contract that a Participant is performing. The proposed rule noted SBA's belief that same analysis should occur when considering whether a Participant has made good faith efforts to meet its BAT. In other words, it would not be appropriate for SBA to consider projected revenue under a contract for which the Participant's offer was unsuccessful beyond the contract's base year of performance.

SBA received 17 comments in response to the proposed changes to § 124.509. Commenters were generally supportive of SBA's proposal to consider only projected revenue under procurements for which the Participant had reasonable prospects of success in the good faith efforts evaluation. However, the majority of these comments urged SBA to provide additional clarity as to how SBA will determine whether a Participant had reasonable prospects of winning a particular contract. According to the commenters, the value of a Participant's prior contracts is one of several relevant factors SBA should consider in determining whether a Participant had reasonable prospects of winning a contract. SBA agrees and notes that the business development assistance provided through the 8(a) BD program is intended to improve a Participant's capabilities and ability to pursue larger, more complex contracts. In proposing this amendment to the BAT regulations, SBA sought to discourage Participants from disingenuously submitting offers, particularly for large dollar-value procurements, for the clear purpose of circumventing the BAT policies; it certainly was not intended to suggest that SBA would consider only projected revenues from lost contract opportunities at or below its current capacity in determining whether a Participant made good faith efforts to obtain work outside the 8(a) BD program. Several commenters recommended that for an entity owned Participant, SBA should consider the past performance and experience of sister subsidiary companies. SBA disagrees. SBA would consider the past performance and experience of affiliated companies, but, under applicable statute and regulations, individual business concerns owned by a Tribe, ANC, NHO or CDC are not affiliated with each other. As SBA has stated previously, SBA believes that the past performance of a sister company can be considered only where that sister company is involved in the procurement under consideration (*i.e.,* as a subcontractor or joint venture partner). In response to the comments, the final rule restructures § 124.509(d)(1)(ii) and adds language clarifying that SBA will consider all relevant factors, to include contract magnitude, and past performance and experience of a joint venture partner and/or subcontractor.

Most commenters agreed with SBA's clarification that only the value of the base year of the contract for which the Participant's offer was unsuccessful would be considered in determining whether the Participant made good faith efforts to achieve its non-8(a) BAT. Two commenters, however, urged SBA to consider the projected revenue under subsequent periods of performance in determining whether the Participant made good faith efforts during the appropriate compliance period. For example, where a Participant made a good faith, but unsuccessful, effort to capture a contract in the first year of its transitional stage of program participation (*i.e.,* program year five), SBA would consider the projected revenue under the base year of the contract when evaluating the Participant's compliance with its non-8(a) BAT for program year five. According to the above commenters, SBA should also consider the projected revenue of the first option period of performance when evaluating the Participant's compliance with its non-8(a) BAT for program year six (and continue doing so for the contract's

entire period of performance). SBA disagrees with this approach. As SBA has previously explained, the non-8(a) BAT requirement ensures that 8(a) Participants do not become unreasonably reliant on 8(a) contract support and are prepared to compete in the open marketplace after exiting the 8(a) BD program. Recognizing a Participant's ''good faith efforts'' to obtain non-8(a) work furthers this purpose while also promoting the firm's business development through ongoing access to sole source contract support. However, SBA is concerned that considering projected non-8(a) revenues from a missed contract opportunity over the total period of performance contract could inadvertently incentivize Participants to submit fewer offers for non-8(a) procurements, especially in years where their non-8(a) BAT threshold is relatively higher. As previously explained, the BAT requirement reflects legislative intent to prepare 8(a) Participants for competition outside the 8(a) BD program. In the agency's best judgment, limiting consideration to the value of the base year of performance and only for the period of compliance in which the offer was submitted strikes the right balance between this goal and continued business development through sole source contract support. In addition, options are not a guarantee of future revenue. If a firm received a non-8(a) contract in year five, SBA would count the revenue received as non-8(a) revenue in determining compliance with its applicable BAT. If the relevant procuring agency did not exercise the first option after the base year, SBA would not count the anticipated, but not received, revenue in year six as non-8(a) revenue for BAT purposes. SBA adopts the proposed clarification in the final rule.

Section 124.514(a)(1)

Section 124.514 provides guidance regarding the exercise of 8(a) options and modifications. Paragraph 124.514(a)(1) currently states that if a concern has graduated or been terminated from the 8(a) BD program or is no longer small under the size standard corresponding to the NAICS code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised. Because the regulatory language specifies graduation and termination from the program, SBA has received a few inquiries as to whether this provision applies to firms that have voluntarily exited the program. SBA has always intended this provision to apply to all firms that are no longer active Participants in the program. The proposed rule merely made that intent clear by specifically providing that this provision applies to all firms whose term of participation in the 8(a) BD program has ended or who have otherwise exited the program through any means. Three commenters supported the clarification without substantive comment. As such, SBA adopts the proposed language as final in this rule.

Section 124.518

Section 124.518(c) provides that SBA may authorize another Participant to complete performance of an 8(a) contract and, in conjunction with the procuring activity, permit novation of that contract without invoking the termination for convenience or waiver provisions of § 124.515 where SBA determines that substitution would serve the business development needs of both 8(a) Participants. SBA has seen several instances where a joint venture between an 8(a) Participant and a non-8(a) business concern was awarded an 8(a) contract and for whatever reason the two firms seek to terminate the joint venture and novate the 8(a) contract individually to the 8(a) Participant that was the lead partner of the joint venture. If novation would occur, performance of the 8(a) contract would remain with an 8(a) Participant (*i.e.,* the 8(a) Participant that was the lead partner of the joint venture). As such the intent of the program would be furthered. It could be argued that the current § 124.518(c) authority could be used to novate the 8(a) contract in this instance; substitution would serve the business development needs of both the initial 8(a) awardee (the joint venture) and the substituting 8(a) Participant (the former lead 8(a) partner to the joint venture). The proposed rule added a new § 124.518(d) to specifically authorize such a substitution. SBA also requested comments on whether it should further define how substitution ''would serve the business development needs of both 8(a) Participants.'' For example, where a Participant was not in compliance with its applicable business activity target, sought to transfer an 8(a) contract to another eligible 8(a) Participant through the substitution process and then sought to perform a significant portion of that contract as a subcontractor to the new 8(a) Participant (to then count the revenue from the subcontract as non-8(a) revenue), SBA explained that it would not determine that such a transfer was in the best interests of the program or serve the business development needs of both 8(a) Participants.

SBA received six comments on the proposed additional of new § 124.518(d), all of which were supportive. SBA therefore adopts this language as proposed. SBA notes, however, that this substitution authority should not be construed as giving the managing 8(a) venturer the option to request a substitution without the consent of the other joint venture partners. While the 8(a) BD program regulations require that an 8(a) Participant, among other things, own at least 51% of the joint venture and serve as the managing venturer responsible for controlling the day-to-day management of the joint venture's contractual performance, nothing in SBA regulations or policy authorizes or gives to the managing 8(a) venturer the unilateral authority to transfer the joint venture's contracts to itself. SBA will consider these principles when reviewing a substitution request under § 124.518(d). Three commenters recommended that SBA provide examples or guidance on what SBA would consider when determining whether a proposed substitution ''would serve the business development needs of both 8(a) Participants.'' As explained in the proposed rule, SBA is concerned that some Participants could use the substitution authority to circumvent important program policies, such as the BAT requirement and the sole source follow-on contracting restriction applicable to sister subsidiaries owned by the same Tribe/ANC/NHO/CDC. In addition, SBA never intended for this substitution authority to allow Participants to sell or otherwise transfer prime 8(a) contracts when doing so would frustrate the program's interests or potentially violate other applicable Federal procurement rules. To this end, SBA has already received several substitution requests from contract holders on 8(a) multiple award contracts, such as the 8(a) Streamlined Technology Acquistion Resource for Services (STARS) III multiple award contract. The contract holders requesting a substitution have typically graduated from the 8(a) BD program or have exceeded the applicable size standard and are therefore no longer eligible to receive sole source orders under the 8(a) STARS III vehicle. Such firms have stated that a substitution would serve their business development needs by raising capital from the sale of STARS III contracting assets, and by eliminating the cost and burden of administering the contract. SBA does not believe a transfer under these and similar circumstances serves the programmatic business development

needs of the contract holder requesting a substitution. Participation in the competitive 8(a) procurement process has been and remains one of the most valuable forms of business development assistance available through the 8(a) BD program. Establishing and implementing a capture strategy, critically evaluating a Request for Proposals, and technical proposal writing are just some of the necessary skills for submitting a successful offer in the Federal marketplace. In SBA's view, losing the opportunity to acquire or hone these skills in the competitive 8(a) context would be antithetical to a firm's business development even where the transfer might provide other legitimate benefits. Additionally, SBA notes that 41 U.S.C. 6305, as implemented at Federal Acquisition Regulation (FAR) Subpart 42.1204, prohibits contractors from selling or transferring a prime Government contract to a third-party. The Government may novate a contract to recognize a third-party as a successor in interest to a Government contract where that interest arises out of the transfer of (1) all the contractor's assets; or (2) the entire portion of assets involved in performing the contract. Where a contract holder seeks to transfer an Indefinite Delivery, Indefinite Quantity 8(a) contract without any task order awards, this may not comply with the requirements of FAR Subpart 42.1204. SBA has and will continue to consider all these factors in determining whether to authorize a substitution on the grounds that doing so would serve the business development needs of both 8(a) Participants. The final rule adds clarifying language and examples to § 124.518(c) to better explain SBA's intent.

Sections 124.602 and 124.604

Section 124.602 sets forth the kind of annual financial statement an 8(a) BD Participant submits to SBA, depending upon its gross annual receipts. Prior to this rule, Participants with gross annual receipts of more than $10 million were required to submit to SBA audited annual financial statements prepared by a licensed independent public accountant; Participants with gross annual receipts between $2 million and $10 million were required to submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant; and Participants with gross annual receipts of less than $2 million were required to submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant. SBA believes that with the value of Federal contracts greatly increasing over the last few years, the top dollar threshold of $10 million is being met by most Participants far more frequently. Recognizing that requiring an audited financial statement can be a significant cost to many small businesses, SBA proposed to require audited financial statements for those Participants exceeding $20 million, reviewed financial statements for those Participants with gross annual receipts between $5 million and $20 million, and in-house financial statements for those Participants with less than $5 million in annual receipts. SBA received 11 comments responding to the proposed increases to the thresholds for the annual financial statement requirements for 8(a) Participants. Commenters overwhelmingly supported the increased thresholds. One commenter appreciated SBA's acknowledgment of the substantial expenses involved in obtaining audited and reviewed financial statements, especially since compliance costs can be a significant barrier for small businesses, particularly in the Federal contracting industry. One commenter recommended that SBA require only internal prepared financial statements. Two commenters supported the increases generally but requested that the threshold to require reviewed financial statements be raised so that the Participants with lower revenues do not have to incur the added cost of a reviewed financial statement. SBA does not believe that only internal prepared financial statements should be required regardless of a Participant's revenues. More sophisticated business concerns should have audited financial statements, which may be required for certain types of contracts as well. In response to the comments, the final rule increases the threshold at which reviewed financial statements are required from $5 million to $7.5 million.

In response to SBA's proposed changes to the financial statement reporting requirement, one commenter suggested that SBA also amend § 124.604, which provides that a Participant owned by a Tribe, ANC, NHO, or CDC must include with its annual financial statement submission information showing how the Tribe/ANC/NHO/CDC has provided benefits to its Native or underserved community through the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program. § 124.602 allows a Tribe/ANC/NHO/CDC to submit consolidated financial statements prepared by the parent entity with schedules for each 8(a) Participant instead of separate audited financial statements for each individual 8(a) Participant. According to this commenter, it would make sense to provide a similar consolidated reporting option for community benefits under § 124.604. While SBA did not specifically propose any changes to § 124.604, we note SBA has long permitted Tribes/ANCs/NHOs/CDCs to annually report consolidated community benefits. Because this commenter's suggested revision merely recognizes current program policy and the entity's discretion to consolidate benefits reporting but does not require such consolidation, the final rule adds language to § 124.604 to clarify that Tribes/ANCs/NHOs/CDCs may elect to submit a consolidated report showing how the applicable Native or underserved community has benefitted through the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program. Of course, as noted above, consolidated community benefits reporting is optional; Tribes, ANCs, NHOs, and CDCs may continue to submit separate annual community benefits reports through each 8(a) Participant.

Section 125.2

SBA's regulations currently make clear that a contracting activity cannot conduct a competition requiring multiple socioeconomic certifications. In this regard, § 124.501(b) prohibits a contracting activity from restricting an 8(a) competition to Participants that are also certified HUBZone small businesses, certified WOSBs or certified SDVO small businesses. There is a similar restriction for the HUBZone program in § 126.609, for the WOSB program in § 127.503(e), and for the VetCert program in § 128.404(d). However, there is no similar specific restriction for small business set-asides and reserves. Where a contracting activity seeks to require 8(a), HUBZone, WOSB or SDVO certification in addition to status as a small business, in essence the contracting activity would be soliciting as an 8(a), HUBZone, WOSB or SDVO small business contract. That is permissible. Similarly, current § 125.2(e)(6) specifies that a contracting officer may set aside orders for eligible 8(a) Participants, certified HUBZone small business concerns, SDVO small business concerns, WOSBs, and EDWOSBs against total small business set-aside multiple award contracts. As such, there should be no doubt that there can be an order or agreement set-aside or reserved for a specific type of small business (*i.e.,* 8(a), HUBZone,

WOSB/EDWOSB, or SDVO) under a multiple award contract that itself was set aside for small business. SBA has been asked whether a contracting activity could require multiple certifications through ''a small business set aside''. SBA believes that the current program specific regulations identified above would prohibit that. In order to eliminate any misinterpretation, the proposed rule added a new § 125.2(c)(6) that would clarify that a procuring activity cannot restrict a small business set-aside or reserve (for either a contract or order) to require multiple socioeconomic program certifications in addition to a size certification.

SBA received eight comments supporting this clarification. One commenter recommended that the regulatory text say ''multiple'' or ''various'' instead of ''one or more,'' since requiring size and one socioeconomic status (8(a), HUBZone, WOSB, or SDVO) is permitted. SBA agrees and has replaced the words one or more with the word multiple. Two commenters also questioned whether there can be a partial set-aside and a reserve on the same requirement. The commenters believe that it makes sense that both should be allowed and that it is currently permitted, but that the regulatory text should be clarified. SBA agrees that both can occur with respect to one procurement requirement. A partial set-side can be done for one or more CLINs that must be set-aside for small business and a reserve could also be done on the same procurement for other items or services where a contracting officer would have discretion to utilize the small business reserve or not. The final rule clarifies the regulatory text to eliminate any confusion as to whether there can be both a partial set-aside and a reserve on the same procurement requirement.

Section 125.3

Section 125.3 governs subcontracting plans and reporting of subcontracting achievements. SBA proposed to extend the due dates for subcontracting reports by 15 days, from 30 days to 45 days. SBA also proposed to extend the time period for reviewing such reports by 15 days, from 60 days to 75 days. These extended time periods recognize that prime contractors are under increased reporting burdens because of order-level subcontract reporting. SBA received three comments supporting these changes without substantive comment. SBA adopts the proposed language as final in this rule.

Section 125.6(d)

Section 125.6 sets forth the limitations on subcontracting that apply to a small business prime contractor. A small business prime contractor, together with any similarly situated entity, must perform a certain specified amount of a small business contract and cannot subcontract more than that amount to another business concern that is not similarly situated. Paragraph 125.6(d) provides that for a multi-agency set aside contract where more than one agency can issue orders under the contract, the ordering agency must use the period of performance for each order to determine compliance. A question has arisen as to who should monitor compliance with such an order, the contracting officer for the underlying multi-agency contract or the contracting officer for the ordering agency. SBA believes that the contracting officer for the ordering agency is in the best position to monitor compliance with the limitations on subcontracting for a specific order. As such, the ordering contracting officer should monitor compliance throughout performance. At the end of performance of the order, the ordering contracting officer should inform the contracting officer for the underlying multi-agency contract if the ordering contracting officer knows that the contractor has failed to meet the applicable limitations on subcontracting requirement.

Additionally, there has been some confusion as to how work performed by leased employees is considered in determining compliance with the applicable limitation on subcontracting. Paragraph 125.6(d)(3) explains that work performed by an independent contractor shall be considered a subcontract and will therefore count against the prime contractor's limitation on subcontracting unless the independent contractor qualifies as a similarly situated entity. Unlike independent contractors, employees obtained from a temporary employee agency, professional employee organization, or leasing concern perform work under the primary direction and control of the recipient concern. For this reason, such individuals are treated as employees of the recipient concern for purposes of determining that concern's employee count under Section 121.106(a). SBA believes the same logic should apply when determining a recipient prime contractor's compliance with the limitations on subcontracting. Work performed by employees leased to the small business prime contractor shall be considered the prime contractor's self-performance, and therefore will not count against the prime contractor's limitation on subcontracting. The proposed rule clarified this position in § 125.6(d)(3). The final rule recognizes an exception where a contract is a staffing contract. SBA believes that it does not make sense to treat leased employees as employees of the prime contractor where the prime contractor and the firm it is leasing from are basically in the same business—staffing.

SBA received 12 comments in response to the two proposed changes to § 125.6. Eight comments agreed that, for a multi-agency set-aside contract where multiple agencies can issue orders, the contracting officer of the ordering agency should be responsible for monitoring compliance with the limitations on subcontracting for a specific order. The commenters believed that the ordering agency contracting officer is in the best position to monitor compliance with the limitations on subcontracting and noted that this approach allows the ordering agency's contracting officer to more effectively oversee contract performance, rather than the contracting officer of the overarching multi-agency contract. One commenter recommended that the ordering agency contracting officer should report a perceived violation only where a concern exceeds the applicable limitation on subcontracting requirement by more than a certain percentage. SBA disagrees. SBA believes that the contracting officer for the underlying multi-agency contract should be made aware of all instances of a contractor's failure to comply with regulatory requirements, including here the limitation on subcontracting requirements. If there are mitigating reasons for a contractor's failure to comply with the applicable limitation on subcontracting (*e.g.,* the ordering changed made changes to the procurement that required more subcontracting than anticipated), the ordering agency contracting officer should identify those reasons to the contracting officer for the underlying multi-agency contract. SBA received six comments on the proposed language regarding leased employees. All six supported the proposal. One commenter requested clarification for an entity-owned Participant as to how leased employees from a holding company or another company owned by the entity will be treated, especially if assigned on an as needed basis. SBA does not believe that further clarification is needed in the regulatory text. If the other entity-owned company is a temporary employee agency,

professional employer organization, or leasing concern, then the work done by those individuals will be considered the prime contractor's self-performance, and therefore not count against the prime contractor's limitation on subcontracting. If not, the work done by those individuals would count as subcontracted work.

Section 125.8

Section 125.8(e) covers how agencies evaluate the capabilities, past performance, and experience of joint ventures, including SBA mentor-protégé joint ventures. For SBA mentor-protégé joint ventures, section 125.8(e) provides that a procuring activity may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. This provision recognizes that protégés may be less experienced when submitting an offer but, if they win the award, will gain experience and capabilities while performing with the mentor. SBA does not require, however, that every contract competition include special evaluation criteria for protégés.

A recent decision by the Court of Federal Claims has caused some confusion as to what past performance a procuring activity can require of a protégé joint venture partner and how that past performance should be evaluated. *See* SH Synergy, LLC v. United States, 165 Fed. Cl. 745 (2023). The SBA's mentor-protégé program is designed to enhance the capabilities of protégé firms by requiring approved mentors to provide business development assistance to protégé firms and to improve the protégé firms' ability to successfully compete for Federal contracts. The program recognizes that many small businesses may not have the necessary past performance and experience to individually compete successfully for certain larger contracts. Thus, it allows joint ventures between a protégé firm and a large business mentor to qualify as small to allow protégé firms to gain valuable experience overseeing and performing larger contracts. While the joint venture as a whole must meet the applicable limitation on subcontracting (or in other words perform a certain percentage of the contract), the protégé firm must perform at least 40% of all the work done by the joint venture partners in the aggregate. Because of that 40% requirement, some procuring activities require protégé joint venture partners to demonstrate some level of past performance as part of a joint venture's offer. Although SBA's current regulation provides that a procuring activity may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally, it does not provide guidance on what a procuring activity could require. SBA proposed to provide such guidance. Specifically, SBA proposed to permit a procuring activity to require some past performance at a dollar level below what would be required of joint venture mentor partners or of individual offerors. The proposed rule provided an example of how this could work. In the example, where offerors must generally demonstrate successful performance on five contracts with a value of at least $20 million, a procuring activity could require a protégé joint venture partner to demonstrate one or two contracts valued at $10 million or $8 million. In addition, if a procuring activity requires a protégé joint venture partner to demonstrate successful performance on two contracts valued at $10 million or more, successful performance by the protégé firm on those $10 million contracts shall be rated equivalently to successful performance by the mentor partner to the joint venture or any other individual offeror on $20 million contracts.

SBA received 26 comments in response to the proposed changes to § 125.8(e). Sixteen comments supported the proposed changes and ten opposed them. Commenters supported giving less stringent requirements for protege firms' past performance. Several commenters recommended that SBA should highlight that the change is intended to limit the type of past performance agencies can require of proteges rather than authorizing the imposition of greater or more complex past performance requirements. SBA agrees that the guidance provided is intended to ensure that procuring activities do not require the same full level of past performance and experience of protégé joint venture members as they do of other offerors generally. This logically means that if a procuring activity requires past performance of a protégé joint venture partner, it must be at a reduced level. The majority of the opposing comments objected to the ''change'' that allows the procuring activity discretion whether to require a protege´ member of a joint venture to demonstrate some level of past performance and/or experience, although one commenter recommended that protégés should always be required to demonstrate some level of individual past performance. SBA notes that that is not a change from current policy. Procuring agencies currently have the discretion to require some level of past performance and experience of protégé joint venture partners. If that were not the case, there would not be GAO and Court of Claims cases considering if a procuring agency required too much past performance and experience of the protégé firm. The proposed rule merely provided guidance on what a procuring activity could require. In response to the comments, the final rule clarifies that a procuring activity contracting officer may rely solely on the past performance and experience of the mentor joint venture partner in its discretion. The final rule also adds a provision to the regulatory text providing that if a procuring activity requires a protégé joint venture partner to demonstrate some successful performance and/or experience on fewer previous contracts of lower values than that required of other offerors generally, successful performance by the protégé firm on the contracts it identifies shall be rated equivalently to successful performance by the mentor partner to the joint venture or any other individual offeror on the higher valued contracts they identify. Although this was clearly set forth in the example to paragraph (e), SBA believes that it should be specified in a separate regulatory provision as well.

Where a joint venture is the apparent successful offeror for a contract set aside or reserved for small business, § 125.8(f) currently authorizes the procuring activity to execute a contract in the name of the joint venture entity or a small business partner to the joint venture. There has been some confusion as to whether a procuring activity can choose to either execute the contract in the name of the joint venture entity or to a small business partner to the joint venture. SBA did not intend such discretion. SBA's joint venture rules set forth in § 121.103(h)(1) provide that a joint venture may be in the form of a formal or informal partnership or exist as a separate limited liability company or other separate legal entity. Where a joint venture exists as a separate legal entity, SBA intended a contract to be executed in the name of the joint venture. SBA intended to allow contracts successfully won by a joint venture to be awarded in the name of the small business partner only where the joint venture was not a separate legal entity, but rather an informal arrangement that had a written joint venture agreement that complied with SBA's regulations. The proposed rule clarified SBA's intent. Two commenters supported this clarification, with one specifying that although they acknowledge that it has always been the SBA's intent, they support explicitly

clarifying that a contract awarded to a joint venture shall be executed in the name of the joint venture if the joint venture is a separate legal entity. SBA adopts the proposed language as final in this rule.

Section 125.9

Section 125.9 sets forth the requirements relating to SBA's mentor-protégé program. Paragraph 125.9(b) specifies rules pertaining to firms seeking to become mentors and to firms which have been approved as mentors in the program. The introductory language to that paragraph provides that any concern that demonstrates a commitment and the ability to assist small business concerns may act as a mentor, including other than small businesses. There has been some confusion as to whether non-profit entities may act as mentors. The statutory authority for the mentor-protégé program specifies that the term ''mentor'' means a for-profit business concern, of any size, that has the ability to assist and commits to assisting a protege to compete for Federal prime contracts and subcontracts. 15 U.S.C. 657r(d). Although § 125.9(b) does not specifically state that a mentor must be a for-profit entity, it requires a mentor to be a ''concern'', and that term is defined in SBA's regulations as a business entity organized for profit under § 121.105(1)(1). To eliminate any confusion, the proposed rule clarified that only for-profit business concerns may be mentors. Two commenters supported the clarification, and SBA adopts the proposed language as final.

Paragraph 125.9(b)(3)(ii)(B) authorizes a mentor to purchase another business entity that is also an SBA-approved mentor of one or more protégé small business concerns where the purchasing mentor commits to honoring the obligations under the seller's mentor-protégé agreement. Paragraph 125.9(b)(3)(i) provides that a mentor that has more than one protégé cannot submit competing offers in response to a solicitation for a specific procurement through separate joint ventures with different protégés. However, it is possible that the initial or selling mentor may be a contract holder as a joint venture with a protégé on the same multiple award contract where the acquiring mentor is also a contract holder as a joint venture with its protégé. In such a case, after the purchase and the purchasing mentor committing to fulfill the obligations of the selling mentor's mentor-protégé agreement, the purchasing mentor could then have two different joint ventures as contract holders on the same multiple award contract. This could allow the mentor to dictate which joint venture could compete for any specific order under the multiple award contract. SBA does not believe that the mentor should be able to choose one protégé over another to compete for an order. In order to clarify SBA's intent, the proposed rule provided that where a mentor purchases another business entity that is also an SBA-approved mentor that is a contract holder as a joint venture with a protégé small business and the mentor is also a contract holder with a protégé small business on that same multiple award contract, the mentor must exit one of those joint venture relationships. SBA understands that this could adversely affect one of the protégé firms involved in a joint venture. To alleviate harm to a protégé, the proposed rule also permitted the protégé firm connected to the joint venture from which the mentor exits to seek to acquire the new mentor's interest in the underlying multiple award contract or reserve and work with the contracting officer to determine whether novation of such contract or reserve to itself only may be appropriate. The protégé may also seek to continue performance under the contract by replacing the new mentor with another business in the joint venture such that the revised joint venture continues to qualify as small. Similarly, the proposed rule also added a new § 125.9(d)(1)(iv) to give a protégé firm a right of first refusal to purchase a mentor's interest in a mentor-protégé joint venture where the mentor seeks to sell its interest in the joint venture.

SBA received 14 comments on the proposed changes to § 125.9(b). Eight comments favored the proposed language, three questioned some of the language and three had comments outside the scope of this rulemaking. Those in favor believed that a protégé should be able to novate its joint venture contract to itself where its mentor is sold to another firm and that firm does not intend continue performance in that joint venture. They felt that to do otherwise would hurt the small business protégé and recommended that contracting officers should be encouraged to process such novation requests. One commenter supported prohibiting a mentor from having two different joint ventures as contract holders on the same multiple award contract since this situation could provide the mentor with an unfair advantage, create a conflict of interest, and potentially harm one or both protégés. One commenter questioned whether the proposed changes were intended to clarify existing guidance or introduce new restrictions. As noted in the proposed rule, SBA's current regulations provide that a mentor that has more than one protégé cannot submit competing offers in response to a solicitation for a specific procurement through separate joint ventures with different protégés. Because of that regulatory provision, SBA believes that current regulations require a firm that becomes the mentor of two protégés on the same multiple award contract to end one of those mentor-protégé relationships. SBA views this change as a clarification of existing policy, not the imposition of a new requirement. Similarly, SBA's current regulations provide that SBA may approve a second mentor for a particular protégé firm where the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship. If a protégé firm enters joint venture relationships with each of its two mentors, those joint ventures cannot compete against each other. They cannot be contract holders on the same multiple award contract. Although that is currently policy, SBA has clarified that point in this final rule. One commenter recommended that SBA clarify that novation would not be necessary where there is merely a change in ownership of the joint venture (*e.g.,* another business buys the minority interest of the new mentor in the joint venture). The commenter believed that as long as there was merely a change in the ownership of the joint venture entity, the joint venture could continue to perform the contract without the need for a novation. SBA agrees that where a joint venture continues to qualify as small and otherwise eligible after a change of ownership of the joint venture, the joint venture can continue to receive orders under the multiple award contract without requiring a novation. One commenter supported the changes but was concerned that SBA assumed that a protégé firm was financially positioned to buy out a mentor's interest in an underlying multiple award contract or buy a mentor's interest in a mentor-protégé joint venture. The commenter recommended that the SBA provide that any financing that the protégé receives from another entity in order to purchase the mentor's interest in a multiple award contract or mentor-protégé joint venture shall not be grounds for a finding of affiliation. SBA agrees that as long as financing is on commercially standard terms affiliation will not be found and makes that clarification in this final rule. Finally, one commenter

sought clarification as to whether the time needed to find a substitute mentor would be tacked on to the new mentor-protégé agreement to give the protege its full six years. Under SBA's regulations, a small business may generally have a total of two mentor-protégé agreements with different mentors. Each mentor-protégé agreement may last for no more than six years. The current regulations also authorize the substitution of one mentor for another where the initial mentor-protégé relationship is terminated. SBA does not believe that the time it takes a protégé small business to find a new mentor should be subtracted from the six-year authorized mentor-protégé relationship. That is SBA's current policy, but the final rule makes that clear in a revised paragraph (c)(4)(iii).

The proposed rule also redesignated current § 125.9(e)(6) as § 125.9(c)(4). This provision relates to rules affecting protégé firms and SBA believes it should more appropriately be located in § 125.9(c), which has a heading entitled ''Proteges.'' The proposed rule added clarifying language to redesignated § 125.9(c)(4)(iv) to make clear that a concern cannot be a protégé for a total of more than 12 years. There has been some confusion that if a protégé elects to extend its mentor-protégé relationship with the same mentor for an additional six-year period that the protégé could somehow be able to participate in the mentor-protégé program as a protégé for more than 12 years. SBA believes that the current regulations clearly restrict such participation to a total of 12 years. Nevertheless, in order to dispel any possible contrary interpretation, the proposed rule specified that a firm could be a protégé for up to 12 years, whether the concern has a mentor-protégé relationship with two different mentors or the same mentor for second six-year period. Two commenters supported this clarification without substantive comment. SBA adopts the proposed language as final in this rule.

Finally, the proposed rule added a new § 125.9(c)(5). Within the provisions relating to mentors in § 125.9(b), the current regulations authorize a firm to purchase another firm that is currently an approved mentor in SBA's mentor-protégé program and to continue that mentor-protégé relationship if the purchasing firm commits to honoring the obligations under the seller's mentor-protégé agreement. The regulations do not, however, currently address any rights a protégé may have where such a sale occurs. There are times that the former mentor-protégé agreement would not be a good fit with the purchasing business concern. The purchasing concern may have different capabilities than the selling concern and may not be the best business concern to carry out the previous mentor's commitments. Where the purchasing concern is not able to fulfill the requirements of the existing mentor-protégé agreements as written, SBA believes that the protégé firm should be able to either negotiate a revised mentor-protégé agreement with the buying concern or terminate the mentor-protégé agreement if the protégé believes the buying concern is not a good fit for it. This right of the protégé is limited to where the new mentor would not fulfill the former mentor-protégé agreement. SBA would have to approve any revised mentor-protégé agreement. If the mentor-protégé agreement is terminated, the protégé firm could seek another business concern to enter a mentor-protégé relationship for a duration not to exceed six years minus the length of the mentor-protégé relationship with the former mentor.

SBA received four comments regarding this proposal. All four supported the language generally. Two commenters sought clarification that the protégé could terminate its mentor-protégé relationship only where the purchasing business concern (*i.e.,* the new mentor) and the protégé cannot agree on either continuing with the previous mentor-protégé agreement or negotiating a new mentor-protégé agreement that is acceptable to SBA. That was SBA's intent and the final rule makes slight wording changes in order to clarify that intent.

Sections 125.12, 126.619, 127.504(h), and 128.401(e)

SBA proposed to relocate size recertification and small business program status recertification to new § 125.12. Historically, size and status recertification have been separately addressed in parts 121 (for size), 124 (for 8(a) BD), 126 (for HUBZone), 127 (for WOSB), and 128 (for service-disabled veteran-owned small business or SDVOSB) of SBA's regulations. SBA sought to provide consistency among and clean up differences in the regulatory text in the programs. SBA believes that the rules regarding recertification should be the same for size and status, across all SBA small business government contracting and business development programs. The consolidation of the rules into one section that is cross-referenced in each small business program regulations will simplify the text and ensure easier, more consistent interpretation and application of the regulations.

Size and status recertification is a complex area of SBA's regulations that requires simplification and clarity, especially in the context of exceptions to recertification and the impact of recertification. The proposed rule made several clarifications to how SBA always intended recertification to operate, but which may be unclear from the existing regulatory text. First, a concern that recertifies as other than the size or status required for an award that it is currently performing may continue to perform the requirement for the remainder of that particular period of performance. Whether it can continue to receive future orders under an underlying contract or agreement after it submitted a disqualifying recertification depends upon whether the underlying contract or agreement is a single award or a multiple award vehicle. A concern that has recertified as other than small or other than a qualified program participant still may receive orders or agreements issued under a single award small business contract or agreement or unrestricted orders issued under an unrestricted multiple award contract. In either case, a procuring agency could not count the order as an award to small business or to the specific type of small business (*i.e.,* 8(a), WOSB, SDVOSB, or HUBZone). For any multiple award contract or agreement, the concern would not be eligible for orders set aside for small business or set aside for a specific type of small business.

Similarly, for a single award small business contract or any unrestricted contract, a concern that recertified as other than small or other than the required small business program status remains eligible to receive options. The procuring agency cannot count the option period as an award to a small business or small business program participant for goaling purposes. Such a concern may recertify as small or as the required small business program status for a subsequent option period if it meets the applicable size standard or becomes a certified small business program participant at that time. Conversely, for a multiple award small business set-aside or reserve, a concern that recertified as other than small or other than the required small business program would be ineligible to receive options.

The proposed rule also clarified SBA's intent as to the effect of a disqualifying recertification that occurs after an offer is submitted but prior to award. For an award set aside or reserved for small business, a concern must recertify its size and, where

appropriate, status if a merger, sale or acquisition occurs after an offer is submitted but prior to award. If the concern submits a disqualifying recertification, it may or may not be eligible for the award depending on when the sale, merger or acquisition occurred. If the merger, sale, or acquisition occurs within 180 days of offer submission and before award, the concern is ineligible for the award. If the merger, sale, or acquisition occurs after 180 days of its offer and before award, the concern would continue to be eligible for the award.

Any disqualifying size or status recertification precipitated by § 125.12(a) or § 125.12(b) (except for the 180-day rule discussed above), renders a concern ineligible for future set-aside or reserved awards, including awards of set-aside or reserved orders against pre-existing unrestricted or set-aside multiple award contracts. Additionally, in support of this interpretation, SBA proposed to allow requests for size determinations following any size recertification made in §§ 125.12(a) and (b) as well as those requested by a contracting officer as set forth in § 125.12(c).

SBA notes that the requirement for size recertification has always been interpreted by SBA to apply to Blanket Purchase Agreements in addition to all other small business set-aside or reserved awards, whether those awards are executed in the form of task orders, contracts, or any other type of procurement mechanism. Following a 2022 bid protest decision from GAO, SBA explicitly added the word ''agreement'' at 13 CFR 121.404(g)(2)(iii).

SBA received 31 comments responding to the proposed changes. Two commenters believed that recertifications should not be required in response to agreements in principle since those agreements may never be finalized or the ultimate sale or merger may take a long time, conceivably beyond one or more additional fiscal years (upon which size status is based). SBA agrees and has eliminated that language from § 125.12(a).

There were strong opinions on both sides of the significant proposals. Many of the commenters were concerned that contract holders on multiple award contracts would not be eligible for orders set aside for small business or set aside for a specific type of small business after disqualifying recertifications. These commenters believed that it could diminish the acquisition value of small business concerns. Others supported the proposed change, stating that to allow a firm that was purchased by a very large business to remain an eligible contract holder on a small business multiple award contract would sanction an unfair competitive advantage in favor of such now large entities for individual orders. These commenters believed that would only encourage more purchases by large businesses, which would hurt individual small businesses. Regarding decertifying recertifications on long-term contracts, many comments also believed that this disincentives growth and penalizes mid-tier businesses that have naturally evolved beyond the small business size standards. Others stated that they did not believe that a firm that becomes other than large or other than an eligible, HUBZone, WOSB or SDVO small business should be able to be eligible for any options beyond five years. They believed that even though an agency could not count the options as awards to small business, the opportunities would not be available to legitimate small businesses. They posed that a firm that may have grown to be other than small in year one of a 10-year contract would be able to benefit as a small business for 9 years after it actually qualified as a small business. Several commenters recommended a phased or delayed implementation of these provisions to allow time to adapt. Commenters recommended one year, two years and five years for a grace period.

SBA agrees that it makes sense to allow business concerns some time to adapt and plan how best to comply with the recertification provisions. The final rule adds a new § 125.9(g) that would delay the effective date of ineligibility for orders and options on underlying small business multiple award contracts due to disqualifying recertifications for one year after the effective date of this final rule. As such, a firm that has a disqualifying size or status recertification due to a merger, acquisition or sale that occurs prior to one year after the effective date of this final rule will remain eligible for orders issued under an underlying small business multiple award contract. Similarly, a firm that has a disqualifying size or status recertification prior to the end of the fifth year of a long-term contract will remain eligible for any options to be exercised prior to one year after the effective date of this final rule. However, in both cases, the procuring activity cannot count any new or pending orders issued pursuant to the contract or any such options exercised under the contact towards its small business and socioeconomic goals. This includes set-asides, partial set-asides, and reserves for 8(a) BD Participants, certified HUBZone small business concerns, SDVOSBs, and WOSBs/EDWOSBs.

In further response to comments, the final rule also amends which business concerns will be ineligible for orders and options after a disqualifying certification due to merger, acquisition or sale. Specifically, the final rule will make ineligible only those contract holders that have disqualifying recertifications involving a merger, acquisition or sale with a large business. Where two business concerns individually qualify as small before a merger, acquisition or sale but do not in the aggregate after such occurrence, the final rule allows the contract holder to remain eligible for orders issued under an underlying small business multiple award contract. Although the surviving entity may be eligible for orders after the merger, sale or acquisition, a procuring activity could no longer count orders issued to the entity as awards to small business.

One commenter encouraged SBA to specify in its final rulemaking that the rule will become effective 30 days (or longer) after the date of final rule publication and wanted to make sure that the rule will not be applied retroactively. As noted in the Dates section of this final rule, the provisions set forth in the rule will not be effective for 30 days after the date of publication. In addition, SBA agrees that any final rule should not be retroactively applied. SBA asserts that this rule has no retroactive effect. Once in effect, the rule will apply to existing contracts, but the provisions making firms ineligible for orders or options after disqualifying recertifications will apply only to future disqualifying recertifications (*i.e.,* ones that occur after one year from the effective date of this rule). Firms that have made or will continue to make disqualifying recertifications prior to one year after the effective date of this rule will continue to be eligible to receive orders and options after the effective date of this rule.

Sections 125.13 and 124.4

The proposed rule added a new § 125.13 explaining the restrictions on fees for representatives of applicants to and participants in the 8(a) BD, HUBZone, WOSB, and VetCert programs. These restrictions are currently contained in § 124.4 for the 8(a) BD program. The proposed rule took the language currently contained in § 124.4 for the 8(a) BD program and adds it to a new § 125.13 that will be applicable to the 8(a) BD, HUBZone, WOSB, and VetCert programs. SBA

considered making revisions to part 126, 127 and 128 of this title adopting the same language contained in § 124.4 for the WOSB, HUBZone, and VetCert programs. Instead, SBA believes that it is more expedient to add a new § 125.13 that would apply to all of SBA's certification programs than it would be to repeat the same language in each of the specific program area's regulations. SBA received three comments agreeing that the restrictions on fees for representatives should apply to all programs, not just 8(a). SBA adopts the proposed language as final in this rule.

Section 126.103

SBA proposed to revise, add, and eliminate certain definitions set forth in 13 CFR 126.103, to clarify existing policies and to reduce the burden on small businesses. Except where otherwise noted in the discussion below, SBA implements these changes as proposed.

SBA proposed to delete the definition for the term ''AA/BD'' because this term no longer appears in Part 126. SBA received no comments on this deletion.

SBA proposed to revise the definition of ''certify'' (or ''certification'') to clarify that this means the process by which SBA determines that a concern is qualified for the HUBZone program and eligible to be designated by SBA as a certified HUBZone small business concern in DSBS. SBA received one comment supporting this clarification without substantive comment.

As discussed above in the corresponding change to § 124.3 for the 8(a) BD program, SBA proposed to revise the definition of ''Community Development Corporation (CDC)'' for HUBZone purposes to align this definition with current practices and that applying to the 8(a) BD program. SBA received two comments supporting this change without substantive comment.

SBA proposed to revise the definition of ''contracting officer'' to correct an outdated citation. SBA received one comment in support of this update.

SBA proposed to revise the definition of ''decertify'' to clarify that a firm may voluntarily withdraw from the program without SBA needing to approve such withdrawal. SBA received one comment in support of this change.

SBA proposed to revise the definition of ''Dynamic Small Business Search (DSBS)'' to reference ''SAM, as defined in this section'' rather than ''the System for Award Management (SAM)''. In addition, SBA proposed to remove the words ''the Dynamic Small Business Search (DSBS)'' wherever they appear and add in their place the acronym ''DSBS''. SBA received one comment in support of this change.

SBA proposed to make several amendments to the definition of ''employee'' to prevent abuse and strengthen the integrity of the program. First, SBA proposed to increase the number of hours that an individual must work to be considered an employee for HUBZone purposes to 80 hours per month (up from 40 hours per month). The HUBZone program was intended to provide meaningful work experiences to individuals who reside in some of the nation's most economically distressed communities to help them gain valuable skills, on-the-job experience, and upward mobility. *See* 143 Cong. Rec. S730 (Jan. 28, 1997); S. Rpt. 105–62 (1997). In 2021, SBA HUBZone analysts identified a pattern in which firms put HUBZone residents on their payroll but did not actually employ them or give them work to perform. Rather, these individuals were put on the payroll only to enable the firm to appear to be eligible for the HUBZone program. This has never been permitted under the HUBZone regulations because allowing this practice would undermine the purpose of the HUBZone program. In response to the discovery of this practice and to prevent further fraud and abuse in the program, SBA proposed to increase the threshold to 80 hours.

As noted in the proposed rule, SBA was concerned that the minimum 40 hours per month was not sufficient to promote the purpose of the HUBZone program. SBA also noted that an 80 hour per month requirement would be consistent with how the 8(a) BD program treats employees establishing a bona fide place of business. In that context, § 124.3 defines the term bona fide place of business for 8(a) construction contracts to mean a location where an 8(a) BD Participant regularly maintains an office within the appropriate geographical boundary which employs at least one individual who works at least 20 hours per week at that location. The 80 hours per month requirement in the proposed rule would be in line with that 20 hours per week requirement. SBA requested comments on whether 80 hours per month was an appropriate threshold and whether there should be a minimum number of hours per week. SBA also sought comments on whether there should be an exception to the 80 hours per month threshold for a limited number (or percentage) of individuals where such individuals are working at least 40 hours per month.

SBA received 83 comments on this proposed change to the definition of ''employee.'' The majority of comments opposed the proposed increase in the minimum number of hours from 40 to 80 per month to meet the definition of ''employee'' for HUBZone purposes. These commenters argued that this change would disproportionately harm part-time employees, particularly students, retirees, people with disabilities, or individuals holding multiple jobs. The commenters noted that these groups often rely on the flexibility that the current 40-hour requirement allows. In addition, several commenters highlighted the potential for businesses to face increased operational costs, reduced hiring opportunities, and greater administrative burdens, which could ultimately lead to firms leaving the program or being less competitive. Many respondents also questioned the justification for this change, noting that it may not effectively address fraud or abuse as intended by the SBA. They suggested that the 80-hour threshold may simply create more paperwork without leading to meaningful improvements. Some commenters argued that the focus should be on addressing bad actors rather than imposing blanket requirements that penalize responsible businesses. Others proposed alternative solutions, such as requiring a certain number of hours per week (*e.g.,* 15–20 hours) instead of instead of a specified number per month, or suggesting a phased implementation to allow businesses to adjust. A number of commenters expressed opposition to using driver's licenses for residency verification and excessive documentation requirements for proving employee status. These commenters viewed these processes as burdensome, particularly for non-driving employees or those with disabilities. Several commenters urged SBA to focus on practical solutions that recognize the realities of running small businesses and supporting diverse workforces, including students, retirees, and individuals with disabilities. A few commenters expressed support for the increase to 80 hours, arguing that it would help boost economic impact in HUBZone areas and ensure that businesses are genuinely contributing to community development. However, even supporters recommended a phased-in approach to avoid overwhelming businesses and employees. Some suggested exceptions for certain types of workers, such as students or specialized professionals, or a more flexible workweek requirement to accommodate various needs. Overall, the feedback indicated a strong desire for SBA to reconsider the 80-hour rule

or provide more nuanced alternatives that balance the goals of the HUBZone program with the practicalities of running small businesses and supporting diverse employees.

SBA has considered the comments received and decided to maintain the 40-hour threshold at this time. However, rather than requiring an aggregate of 40 hours of work during the 4-week period preceding the date of review, this final rule generally requires an individual to work at least 10 hours per week during the 4-week period preceding the date of review in order to be considered an ''employee'' for HUBZone purposes. The final rule permits a business concern to allow an employee less than 10 hours per week, provided that the employee works at least 40 hours per month, if the business concern can demonstrate a legitimate business reason for doing so. For example, if a business concern demonstrates that there is seasonal work that requires more work in one or two weeks than in the rest of the month, SBA could find the individual to count as an employee for HUBZone purposes. SBA believes this decision is responsive to the public comments while also addressing some of the concerns outlined in the proposed rule.

Second, SBA proposed to add a provision clarifying the obvious requirement that an individual must be performing work in order to be considered an employee for HUBZone purposes. The provision provides that SBA may request documentation demonstrating that an individual is performing work, including job descriptions, resumes, detailed timesheets, sample work product and other relevant documentation. SBA received 12 comments on this clarification. Some commenters believed it served the purposes of the program to pay HUBZone residents minimum wage without giving them any work to do. SBA strongly disagrees. Allowing such a practice would be akin to allowing companies to buy their way into the HUBZone program, which is far from the purpose of the HUBZone program. As noted above, the HUBZone program was created to provide employment opportunities to residents of economically distressed areas. Simply paying HUBZone residents, without giving them work to do, does not create real employment opportunities.

In addition, some of the comments opposed the collection of employee resumes. A few commenters argued that instead of resumes, which could contain false information that HUBZone companies cannot verify, SBA should require specific work history from employees related to their time at the applicant company. Some commenters also expressed opposition to the proposed requirement for employees to perform work that is ''commensurate'' with the hours charged. These commenters argued that this expectation misrepresents the intent of the HUBZone program, which is primarily focused on increasing employment opportunities and economic development in underutilized areas, rather than mandating specific work contributions. They emphasized that HUBZone firms providing employment and wages are fulfilling the program's goals, regardless of the nature of the work performed. Commenters highlighted the need for simplification in the requirements, advocating for limited proof related to hiring processes rather than extensive documentation like job descriptions and sample work products. They argued that such requirements complicate the certification process, especially for smaller businesses that may lack the resources to comply with such stringent documentation requirements. A few commenters suggested that SBA provide further clarity on what constitutes ''meaningful'' work and offer templates and training to help businesses meet SBA's expectations. In response to these comments, SBA reiterates its position that the HUBZone program was intended to create meaningful employment opportunities in underserved areas. SBA will continue to require individuals to perform some work in order to be considered employees for HUBZone purposes and may require relevant documentation to ensure this requirement is being met.

Third, SBA proposed deleting the provision within the definition of ''employee'' providing that individuals who receive in-kind compensation may be considered employees. The current regulations provide that an individual receiving in-kind compensation may be considered an employee, where the compensation is commensurate with the work performed by the individual and provides a demonstrable financial value to the individual, and where the arrangement is compliant with all relevant Federal and State laws, such as Federal tax laws. SBA proposed to eliminate this provision because SBA has found that little to no firms are able to meet these requirements. The process of requesting and reviewing documentation that is ultimately insufficient has only served to slow down application processing. SBA received five comments in response to this proposed change, the majority of which supported the deletion. Commenters agreed that removing this provision would improve the efficiency of the eligibility review process. One commenter recommended that SBA evaluate cases involving in-kind compensation individually. The commenter noted that permitting in-kind compensation was originally aimed at helping smaller startups, particularly those with spouses or family members who contributed to the business but did not hold ownership. SBA has considered the comments and is adopting the proposal to delete the provision allowing in-kind compensation. Despite the original intent of this provision, SBA believes the significant delays in processing—including delays caused when firms do not understand the provision or the requirements for meeting it—outweigh its potential benefit.

Fourth, SBA proposed adding language to clarify that individuals who are obtained ''from a concern *primarily engaged* in leasing employees'' are generally considered employees for HUBZone purposes. The current regulations provide that individuals obtained from a ''leasing concern'' are generally considered employees. However, it has been SBA's policy for a number of years that leased employees will only be considered employees for HUBZone purposes where they are leased from a concern that is primarily engaged in leasing employees. This policy is consistent with SBA's size regulations at § 121.103(b)(4), which provide: ''Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses . . . are not affiliated with the leasing company . . . solely on the basis of a leasing agreement.'' SBA received three comments in response to this proposal, all of which supported the change. The commenters noted that this proposal will provide greater clarity for the HUBZone program. One commenter noted that there is a need for clearer, more defined standards to differentiate between leasing companies and subcontractors, as the line between them is increasingly blurred, leading to confusion and compliance issues. The commenter believes that establishing specific criteria for what constitutes a leasing company will help ensure consistent application of the rule and prevent potential exploitation of this provision. SBA agrees with these comments and adopts the language related to leased employees as proposed.

Finally, SBA requested comments on when reservists should be considered employees for HUBZone purposes. As SBA noted in the proposed rule, when reservists are called up for active duty, companies may be required to promptly reemploy them in an appropriate reemployment position (which may or may not be the pre-service position) upon their return from service. A company may list such individuals as employees, which may mean those individuals appear on the company's payroll with zero hours listed. SBA received 12 comments in response to this request, 11 of which supported treating reservists as employees when they are called up for active duty. The comments emphasized the importance of recognizing reservists—as well as National Guard members—as employees even during their periods of active duty. They argued that this policy prevents penalties to HUBZone firms for complying with the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA''), 38 U.S.C. 4301–4335. Commenters suggested that reservists should be counted as employees for the entire duration of their call-up, ensuring that firms are not disadvantaged when key personnel are deployed, particularly if they are critical for meeting HUBZone employment requirements. A few commenters suggested extending these protections to employees on long-term disability or maternity leave, ensuring that they retain their employee status as long as their positions are maintained. The comments also proposed including military spouses and dependents residing near HUBZone areas to promote employment opportunities for military families. Based on the comments received, the final rule provides that, in general, reservists and National Guard members will be treated as employees for HUBZone purposes during their periods of active duty, even if they do not receive compensation from the HUBZone company during this time. The final rule does not adopt the suggestion that this treatment be extended to military spouses or dependents, or to employees on long-term disability or those on maternity leave who are not currently on the company's payroll. In other words, if an individual is on medical or maternity leave and is still being paid by the HUBZone concern (*i.e.,* being paid on sick or maternity leave), the individual will count as an employee for HUBZone purposes. However, if the individual has exhausted her/his paid leave and is taking additional time off from employment, the individual would not count as an employee for HUBZone purposes. SBA believes that at that point in time there is no certainly that the individual would come back to be employed by the firm and allowing such individual to be considered an employee for HUBZone purposes would create a much larger exception to the rule and leave the program vulnerable to abuse. The final rule clarifies that individuals who are on sick or maternity leave and continue to be paid by the business concern are considered employees.

SBA proposed to add a new definition for the term ''HUBZone certification date'' providing that this is the date on which SBA approves a concern's application for HUBZone certification and is the date specified in the concern's certification letter. The definition provides that if a concern leaves the HUBZone program and reapplies for certification, their HUBZone certification date is the date SBA approves the concern's most recent application.

SBA proposed to add a new definition for the term ''HUBZone Map'' providing that the HUBZone Map is a publicly accessible online tool that depicts HUBZones.

SBA proposed to add a new definition for the term ''HUBZone resident employee'' providing that this means an individual who meets the definition of an employee and who SBA has determined resides in a HUBZone.''

SBA proposed to amend the definition of the term ''HUBZone small business concern'' by deleting the last sentence, which provides: ''A concern that was a certified HUBZone small business concern as of December 12, 2017, and that had its principal office located in a Redesignated Area set to expire prior to January 1, 2020, shall remain a certified HUBZone small business concern until June 30, 2023, so long as all other HUBZone eligibility requirements are met.'' This was a reference to the previous map freeze, and since the map freeze ended on June 30, 2023, this language is no longer necessary.

SBA proposed to revise the definition of ''Indian Tribal Government'' to make it consistent with the definition of the term ''Indian tribe'' in the 8(a) BD Program regulations at § 124.3 of this chapter. Specifically, SBA proposed to revise the definition to explicitly allow participation by State-recognized Tribes. SBA received one comment opposing this change, arguing that expanding eligibility would significantly increase the number of competing entities. The commenter argued that already, a large percentage of HUBZone dollars go to Tribal 8(a) companies, creating an imbalance in contract awards and urged SBA to explore this differentiation to foster a more level playing field. SBA disagrees. State-recognized Tribes are legitimate Tribes and Federal assistance programs should be equally available to them and, in this case, to business concerns that they own. SBA does not believe that it makes sense for a tribally-owned small business concern to qualify as eligible for the 8(a) BD program and then, with the same ownership and control, fail to qualify for the HUBZone program as an eligible tribally-owned small business concern. One of the purposes of this final rule is to make the eligibility requirements for SBA's various programs as consistent as possible. As such, SBA adopts the proposed language as final in this rule.

SBA proposed to revise the definition of ''interested party'' to prevent non-HUBZone firms from filing a HUBZone protest on a HUBZone set-aside procurement. Currently, an interested party is defined as any concern that submits an offer for a specific HUBZone set-aside contract or order, or any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone small business concern. In the context of a HUBZone set-aside contract, SBA does not believe that a firm that is not itself a qualified HUBZone small business concern should be able to submit a protest. In other words, a large business or a small business which is not a qualified HUBZone small business should not be able to protest the HUBZone status of the apparent successful offeror on a HUBZone set aside contract merely because it submitted an offer for that contract or order. The large business or small business which is not a qualified HUBZone small business is not harmed by an award to the apparent successful offeror since it has no right itself to that award. It is ineligible for that award. Only firms that are capable of winning the HUBZone set-aside contract or order should be able to protest the HUBZone status of an apparent successful offeror. SBA has seen situations where a non-eligible firm has submitted an offer and then protested the HUBZone status of the apparent successful offeror. SBA believes this is not the intent of the protest process and causes unnecessary delays. If such a ''protest'' raises a genuine concern, SBA can always adopt it as an SBA-initiated protest. However, often this is a delay tactic used by an incumbent contractor protesting the apparent successful offeror in order to

continue to perform the underlying work while the protest is resolved. This change would not affect the ability of a large business to protest the HUBZone status of an apparent successful offeror where the apparent successful offeror received the benefit of the HUBZone price evaluation preference in an unrestricted competition and the large business submitted an offer for that contract. In such a case, a large business could otherwise be eligible for the award of the contract.

On May 16, 2024, SBA published a proposed rule in the **Federal Register** to make several changes to the WOSB program. 89 FR 42816. In that rule, SBA proposed to amend the definition of the term ''interested party'' to clarify who may submit a protest against an apparent successful offeror's EDWOSB or WOSB status. 89 FR 42819. In response to that proposed rule, commenters recommended that SBA should also clarify the term ''interested party'' for both HUBZone and SDVO status protests. SBA agreed and is amending the term ''interested party'' for HUBZone status protests in that final rule. As such, it is no longer necessary to make that change in this final rule.

SBA proposed to amend the definition of ''principal office'' to make several changes and clarifications. First, SBA proposed to require firms to provide a lease that commenced at least 30 days prior to the date of SBA's review and ends at least 60 days after the date of SBA's review. Second, SBA proposed to clarify the requirement that a firm must conduct business from the location identified as the firm's principal office and may be required to demonstrate that it is doing so by providing documentation such as photos and/or providing a live or virtual walk-through of the space. SBA also proposed to clarify that for shared working spaces (or ''coworking'' spaces), firms will need to provide evidence that the firm has dedicated space within any shared location, and that such dedicated space contains sufficient work surface area, furniture, and equipment to accommodate the number of employees claimed to work from this location. SBA proposed to specify that a virtual office (or other location where a firm only receives mail and/or occasionally performs business) does not qualify as a principal office. Third, SBA proposed to add a provision stating that if 100% of a firm's employees telework (*i.e.,* work the majority of the time from their homes), then at least 51% of its employees must work from HUBZone locations and the firm's principal office would be the location where its records are kept. One of the purposes of the principal office requirement is to provide an infusion of capital into the HUBZone area with employees utilizing the services of other business concerns located near the HUBZone firm's principal office. Where all of a firm's employees telework, that intent cannot be fulfilled. However, SBA understands that in today's business environment, firms are utilizing telework employees more and more. With that understanding, SBA proposed to allow 100% of a firm's employees to telework, but where that occurs SBA required the firm to have 51% of its employees reside in a HUBZone instead of the normal 35%. SBA believes that such an additional requirement would make up for the lack of additional capital infusion caused by not having a traditional office located in a HUBZone. In addition, SBA sought comments on whether SBA could allow teleworking employees who reside and work within the same census tract as the firm's claimed principal office (or an adjacent census tract) to be counted as working from the principal office.

SBA received twenty-six comments on these proposed changes, some of which supported the proposed revisions and some of which opposed them. Most commenters opposed the proposed increase of the HUBZone residency requirement from 35% to 51% for firms with teleworking employees. Many argued that such a change would be detrimental to small businesses, especially in sectors like IT and consulting, where high-wage positions often operate remotely. These commenters believed that a 51% requirement would be unmanageable and could discourage HUBZone participation, ultimately undermining the program's goal of fostering economic growth in underutilized areas. Instead, they suggested maintaining the 35% threshold, which has historically facilitated access for small businesses, allowing them to thrive while contributing to local economies. Many commenters argued that the principal office should not be limited to traditional office spaces, especially since many small businesses operate from home offices. They advocated for counting employees who reside and work in the same or adjacent census tracts as those working from the principal office, even if it is owner-occupied. Additionally, some commenters raised concerns about the proposed requirement for a lease to be active for a specific period before and after SBA reviews, which could impose burdensome compliance challenges for businesses with shorter-term leases or those sharing space with parent companies. Overall, the comments emphasized the need for flexibility in the definition of the principal office and the residency requirement to reflect contemporary work practices, such as telework. Many suggested that SBA should consider alternatives that recognize the realities of modern business operations without creating barriers to entry for new firms. Additionally, they called for clear guidance and documentation expectations to ensure compliance while maintaining the program's integrity and supporting economic development in HUBZone areas.

Given the volume of negative comments received, SBA has decided not to implement the proposed provision requiring that if 100% of a firm's employees telework, then 51% must reside in HUBZones in order to meet the principal office requirement. SBA believes that allowing 35% of a firm's employees to qualify the firm as HUBZone eligible where the firm does not have a ''principal office'' would be inconsistent with the statutory requirements. The principal office requirement is statutorily required in addition to the 35% residency requirement. The proposed rule attempted to recognize the increase in teleworking, but sought to make up for the lack of a principal office being located in a HUBZone by requiring a greater percentage of HUBZone resident employees. The final rule does not adopt the proposed language. As such, the current policy will continue to apply, meaning that HUBZone firms must always have an office located in a HUBZone where more employees work compared to any other location (unless all employees work in HUBZones and have at least 35% HUBZone resident employees. SBA will continue to evaluate the impact of the prevalence of telework on the HUBZone portfolio.

SBA proposed to revise the definition of ''Qualified Disaster Area'' to provide that a census tract or non-metropolitan county shall be considered to be a Qualified Disaster Area starting on the date on which the President declared the major disaster for the area in which the census tract or non-metropolitan county, as applicable, is located (or in the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or non-metropolitan county, as applicable, is located) and ending on the date when SBA next updates the HUBZone Map in accordance with § 126.104(a). This is SBA's current interpretation of the statutory definition of ''Qualified

Disaster Area'' and SBA proposed to make that interpretation clearer. SBA received two comments on this, both of which supported SBA's clarifications.

SBA proposed to revise the definition of ''Redesignated Area'' to delete the last sentence, which currently reads: ''However, an area that was a redesignated area on or after December 12, 2017, shall remain a redesignated area until June 30, 2023.'' This is a reference to the previous map freeze, and since the map freeze ended on June 30, 2023, this language is no longer necessary. SBA received one comment supporting this update.

SBA proposed to revise the definition of ''reside'' to provide that to determine residence, SBA will first look to an individual's address identified on his or her driver's license ''or other government-issued identification.'' The current regulation provides that SBA will rely on an individual's voter registration card. However, voter registration cards generally do not specify the date that they were issued and thus SBA cannot rely on them to determine how long an individual has resided at a location. In addition, SBA proposed to change the requirement for an individual to have lived at a location for 180 calendar days immediately prior to the relevant date of review. SBA proposed to decrease this to 90 calendar days because it would allow firms to enter the program more quickly where they have employees who have resided in HUBZones for less than 180 days.

SBA received 13 comments on these proposed revisions to the definition of ''reside.'' Eight commenters supported these changes and five opposed them. The commenters who supported the reduction to 90 days argued that it would streamline the certification process and encourage companies to hire HUBZone residents more efficiently. They emphasized that the current rules create rigidities that can hinder businesses from fully benefiting from HUBZone participation. Suggestions for improvement included allowing greater flexibility in how residency is verified, such as accepting various forms of documentation and aligning verification processes with existing employment and tax records. Commenters argued that this flexibility would also accommodate special circumstances, like those faced by military personnel and students living in HUBZones, ensuring that these individuals can still contribute to and benefit from the HUBZone program. Commenters who opposed the change to 90 days were concerned about the potential for companies to hire employees only temporarily to meet certification requirements. They argued that employees should be permanent members of the company, which would foster a more stable workforce. Additionally, there was significant opposition to using driver's licenses for address verification. Some commenters argued that it imposes unnecessary financial burdens on employees, especially those who may not regularly update their identification due to economic constraints. Alternative verification methods, such as lease agreements, were suggested as more practical solutions.

SBA agrees that some flexibility in demonstrating residency is required, and that there may be good reasons why a driver's license does not match the address of the claimed HUBZone residence. For example, where a claimed HUBZone employee's spouse is in the military and that individual has accompanied the spouse to a new residence where the spouse is currently deployed, the individual's driver's license may legitimately identify a residence in a totally different State. However, SBA still believes that a driver's license is the easiest way to demonstrate residency and that it should not be eliminated as a means of verifying an individual's address. The final rule clarifies that SBA will ask for a driver's license in all cases, but if a driver's license is not available (*e.g.,* an individual lives in a city and uses only public transportation) or the residence on the driver's license does not match the claimed HUBZone residence, SBA will accept other proof of residency. In such case, the final rule requires that an individual also provide an explanation as to why a driver's license is unavailable or inconsistent. This is a change from the proposed rule, which required an individual to submit a signed statement explaining why a driver's license is unavailable and attesting to the individual's dates of residency. SBA believes that the final rule is a more reasonable requirement. The final rule adopts the 90-day residency requirement set forth in the proposed rule. SBA believes that 90 days strikes a good balance between ensuring that individuals actually reside in a specified location and allowing firms seeking HUBZone certification to avail themselves of a streamlined application process. SBA is not concerned with the commenters who believed that companies could hire employees only temporarily to meet certification requirements because the final rule also adds the requirement that a firm must qualify as an eligible HUBZone small business concern as of the date it submits an offer for a HUBZone contract.

SBA proposed to revise the definition of ''Small business concern (SBC)'' to make it consistent with the definition contained in § 126.200(b)(1). In order to be eligible for the HUBZone program, SBA previously required that a concern qualify as small for the size standard corresponding to its primary industry. That requirement was contained both in § 126.103 and § 126.200(b)(1). In 2023, SBA amended § 126.200(b)(1) to specify that a concern must qualify as small under the size standard corresponding to any NAICS code listed in its profile in the System for Award Management. 88 FR 26164, 26212 (Apr. 27, 2023). SBA inadvertently did not make a corresponding change to the definition of small business concern contained in § 126.103. Thus, SBA proposed to amend § 126.103 to be consistent with § 126.200(b)(1). SBA implements this change in the final rule.

SBA proposed to add a new definition for the term ''System for Award Management (SAM)'' providing that this term has the same meaning as that which is in FAR 2.101. SBA also proposed to remove the words ''System for Award Management'' wherever they appear in this part and add in their place the acronym ''SAM''.

Finally, SBA proposed to remove the word ''SBC'' wherever it appears in this part and add in its place the phrase ''small business concern''.

Section 126.104

SBA proposed to make several amendments to § 126.104, which explains how Governor-designated covered areas become designated. First, SBA proposed to insert language providing that a State Governor may annually submit a petition to the SBA Office of the HUBZone Program requesting that certain covered areas be designated as Governor-designated covered areas. This is not a change from current policy, but rather a restatement of that policy in a more clear and direct way. Second, SBA proposed to clarify that a petition need not seek SBA approval for those covered areas previously designated as Governor-designated covered areas. Third, SBA proposed to specify that a Governor-designated covered area will be treated as a HUBZone until SBA next updates the HUBZone Map in accordance with § 126.104(a), or one year after the petition is approved, whichever is later. Fourth, SBA proposed to authorize the Associate Administrator for Government Contracting and Business Development or designee, instead of the SBA Administrator, to approve specific

covered areas to be considered as Governor-designated covered areas. SBA believes that this will reduce the amount of time to approve a petition, which will allow small businesses located in such areas the opportunity to participate more expeditiously in the HUBZone Program.

Finally, SBA proposed to remove the term ''urbanized area'' in the definition of ''covered area'' in § 126.104(d)(1). The HUBZone statute and the current regulations provide that only certain areas are eligible to become Governor-Designated Covered Areas. Such areas are referred to as ''covered areas.'' A ''covered area'' is defined in the statute and regulations as ''an area in a State . . . (i) [t]hat is located outside of an urbanized area, as determined by the Bureau of the Census; (ii) [w]ith a population of not more than 50,000; and (iii) [f]or which the average unemployment rate is not less than 120 percent of the average unemployment rate of the United States or of the State in which the covered area is located, whichever is less, based on the most recent data available from the American Community Survey conducted by the Bureau of the Census.'' 15 U.S.C. 657a(b)(3)(F)(v)(I); 13 CFR 126.104(d)(1). Thus, the statute and implementing regulations provide that ''covered areas'' must be located outside of ''urbanized areas.'' At the time this provision was implemented, the Census Bureau defined ''urbanized areas'' as ''urban areas'' with populations of 50,000 or more. In addition, the Census Bureau defined ''urban clusters'' as ''urban areas'' with populations of more than 2,500 and less than 50,000. Given these definitions, SBA interpreted the statute to mean that areas located in ''urban clusters'' could be eligible for Governor's designation if they also met the unemployment requirement. In addition, SBA interpreted ''area'' to mean either a census tract or a county. Following the 2020 census, the Census Bureau changed the definition of ''urban area'' in several ways, including by removing the distinction between ''urbanized areas'' and ''urban clusters'' and discontinuing the use of those terms. As a result, areas that previously were known as urbanized areas or urban clusters are both now simply designated as urban areas. In a **Federal Register** notice published on December 29, 2022, the Census Bureau noted: ''Agencies using the [urban area] classification for their programs are responsible for ensuring that the classification is appropriate for their use.'' 87 FR 80114, 8011. To be consistent with Congressional intent, SBA proposed to amend the definition of ''covered area'' to remove the term ''urbanized area'' and instead provide that the term ''covered area'' means a census tract or a county ''that is located outside of an urban area, as determined by the Bureau of the Census, with a population of not more than 50,000.'' SBA received no comments on proposed § 126.104 and adopts it as final in this rule.

Section 126.105

SBA proposed to add a new § 126.105, explaining when the HUBZone Map will be updated in accordance with statutory requirements. Proposed § 126.105 provided that Qualified Census Tracts and Qualified Non-Metropolitan Counties will be updated every five years. This is consistent with the statutory requirement for SBA to update these designations on a five-year cycle. The proposed rule provided that Redesignated Areas will be added to the HUBZone Map when areas cease to be designated as Qualified Census Tracts or Qualified Non-Metropolitan Counties, in accordance with the five-year cycle, and will expire after three years. The proposed rule provided that Qualified Base Closure Areas will be added to the HUBZone Map after SBA receives information that the Department of Defense has created a new base closure area and will expire after eight years. The proposed rule provided that Qualified Disaster Areas generally will be added to the HUBZone Map on a monthly basis, based on data received by SBA from the Federal Emergency Management Agency (FEMA), and generally will expire on the effective date of the five-year HUBZone Map update following the declaration. Finally, the proposed rule provided that Governor-designated covered areas will be added to the HUBZone Map after SBA approves a petition in accordance with § 126.104 and will expire on the effective date of the five-year HUBZone Map update following the approval, or one year after the petition is approved, whichever is later.

SBA received three comments on this new section, all of which were supportive. One commenter noted that the five-year cycle offers businesses greater stability and minimizes disruptions, fostering long-term planning and investment in HUBZone areas. To further improve this area of the program, the commenter suggested including active-duty military bases in eligibility criteria to increase participation from military families and extending the re-designation period from three to five years to reduce administrative burden on SBA and to provide more stability for affected communities. SBA notes that these changes would require statutory amendments. As such, SBA is implementing this section as proposed.

Sections 126.200(b)(1), 127.200(e), and 128.204(a)

Section 126.200 sets forth the requirements a concern must meet to be eligible as a certified HUBZone small business concern. Pursuant to § 126.200(b)(1), a concern, together with its affiliates, must qualify as a small business concern under the size standard corresponding to any NAICS code listed in its profile in SAM. This paragraph does not, however, explain how SBA will determine whether a business concern qualifies as small. Some have questioned whether SBA performs a formal size determination with respect to each application. That is not the case. In determining whether a concern seeking to be a certified HUBZone small business (or one seeking to recertify its HUBZone status) qualifies as small under the size standard corresponding to a specific NAICS code, SBA will accept the concern's size representation in SAM, unless there is evidence to the contrary. SBA will request a formal size determination pursuant to § 121.1001(b)(8) of this chapter where any information it possesses calls into question the concern's SAM size representation. The proposed rule clarified SBA's intent in this regard. The proposed rule also provided the same guidance for WOSB/EDWOSB certifications by adding a new § 127.200(e) and to VOSB/SDVOSB certifications by revising § 128.204(a).

SBA received two comments that supported this change. Both commenters agreed that SBA should not perform a formal size determination for every applicant to the HUBZone, WOSB, and VetCert programs. One commenter noted that size is generally a self-certification function that is properly addressed by protests from competitors with respect to the award of specific contracts, and it would be burdensome for both SBA and individual applicants to require formal size determinations on every application. One commenter also recommended that the applicable provisions be clarified to apply the same rule to certification and recertification. Although SBA believes the proposed rule adequately captured firms applying for HUBZone, WOSB and VetCert certifications and those seeking to recertify such status, the final rule makes minor wording changes to make that clear.

Section 126.200

SBA proposed to revise § 126.200(c)(1) to incorporate policy updates to the ''long-term investment'' provision, which was implemented through SBA's final rule published on November 26, 2019 (84 FR 65222). This provision incentivizes firms to make long-term investments in qualifying HUBZones by allowing them to maintain their principal office for up to 10 years and continue to be considered to meet the principal office requirement even if the area loses its HUBZone designation. First, SBA proposed to specify that the 10-year ''clock'' starts to run on the firm's HUBZone certification date (if the investment was made prior to the firm's certification) or on the firm's recertification date that follows the execution of the lease or deed (if the investment was made after the firm's certification). Second, SBA proposed to clarify SBA's current policy that a firm is not eligible to take advantage of the long-term investment provision if its principal office is in a Redesignated Area or a Qualified Disaster Area at the time of the investment. Redesignated Areas and Qualified Disaster Areas are areas that have already lost their designation as Qualified Census Tracts or Qualified Non-Metropolitan Counties because the income, poverty, and/or unemployment levels of those tracts/counties have improved beyond the statutory levels necessary to qualify as HUBZones. SBA does not believe it would be in line with the purpose of the HUBZone program—to encourage investment in low-income and high-unemployment areas—to encourage firms to invest in areas that have already surpassed the HUBZone thresholds for these socioeconomic indicators. SBA notes that if a firm's principal office is in a location that falls within both a qualifying area (*i.e.,* Qualified Census Tract, Qualified Non-Metropolitan County, Governor-Designated Covered Area, Qualified Base Closure Area) and a non-qualifying area (*e.g.,* Redesignated Area that was previously a Qualified Non-Metropolitan County) at the time of the investment, the firm would be eligible for this provision. In addition, SBA proposed to provide that this provision would not apply to an investment made within 180 days of the expiration of an area's designation as a Qualified Census Tract, Qualified Non-Metropolitan County, Governor-Designated Covered Area, or Qualified Base Closure Area. Third, SBA proposed to provide that a firm is not eligible for this provision if its principal office is owner-occupied (*e.g.,* a location that also serves as a residence). In such a case, SBA does not believe that the investment in the HUBZone was primarily to develop a certified HUBZone small business.

SBA received four comments on proposed § 126.200(c), three of which were supportive of the clarifications related to the long-term investment provision. One commenter opposed the proposed exclusion for an owner's residence, but this commenter mistakenly believed that the rule proposed to disallow an owner's residence to qualify as a principal office, when in fact the rule proposed this exclusion only for the long-term investment provision. Another commenter supported the timing of the 10-year clock but encouraged SBA to allow exceptions to the owner-occupied exclusion. For example, if a company purchases a property and is in the process of building or intends to build, the commenter suggested that the property could be considered eligible if it is commercially zoned. Additionally, the commenter suggested that SBA should consider providing flexibility for properties like duplexes that serve dual purposes (both residential and office), as more companies are adopting such models. SBA does not believe that it makes sense to allow an exception for future construction. At the time of certification, a firm must demonstrate that it currently has a principal office in a HUBZone. Unless it does so, it would not be eligible for participation in the program. Construction of a new principal office could take several years. If it does not currently have a principal office located in a HUBZone and SBA counted the projected new construction site as its principal office, the firm would in essence would be certified into the program without currently meeting all of the necessary requirements and could be in this non-compliance state for a lengthy time while construction takes place. SBA does not believe that was the intent of the program. Conversely, if a firm currently has a principal office located in a HUBZone but has purchased another property in a HUBZone to construct a new principal office at the time of its application, it again does not make sense to invoke the long-term investment provision. If SBA considered the projected construction site to be an applicant's principal office, the firm would lose the construction time from the 10-year protection period. As such, SBA does not adopt this suggestion. Regarding a duplex, SBA believes that a duplex, where residence and business are truly separated, would qualify for the long-term investment protection. A duplex has two separate addresses. The final rule states that an owner's residence cannot qualify for the long-term investment protection. However, where a residence is located in one half of a duplex with a separate address from the business concern which is located in the other half of the duplex with its own distinct address, the business duplex address would qualify for the long-term investment protection. It would not, however, where the address of the residence is the same as the address of the business.

The final rule amends the principal office long-term investment provision to state that the 10-year protection period starts to run on the firm's HUBZone certification date (if the investment was made prior to the firm's certification) or on the date of the investment (if the investment was made after the firm's HUBZone certification date). The language stating that the protection period started on the date of recertification was a holdover from when HUBZone recertification was required annually. Because this rule changes recertification from an annual requirement to a requirement that occurs every three years, SBA does not believe it makes sense to tie the 10-year protection period to the date of recertification where the investment is made after the date of the firm's certification. If an investment occurs soon after certification, and recertification is not required for three years, a firm could receive almost 13 years of protection instead of the intended 10 years. That was not SBA's intent.

SBA proposed to revise § 126.200(d)(1) to clarify that if a firm has one employee, that employee must reside in a HUBZone for the firm to be eligible for HUBZone certification. That has always been SBA's interpretation of the HUBZone requirements, and SBA proposed to make that explicit. SBA did not receive any comments on this clarification and is implementing it as proposed.

SBA proposed to revise § 126.200(d)(3), which addresses ''Legacy HUBZone Employees,'' to clarify certain requirements and place limits on who can qualify as a Legacy HUBZone Employee. First, SBA proposed to clarify that a Legacy HUBZone Employee is an individual who: (a) resided in a HUBZone (other than a Redesignated Area) for at least 90 days preceding, and 180 days following, the concern's HUBZone certification date or most recent recertification date, and (b) remains an employee at the time of the concern's current recertification date. Second, SBA proposed to clarify

that an individual cannot reside in a Redesignated Area and qualify as a Legacy HUBZone Employee. This does not mean to imply that an individual who resided in a HUBZone when a firm was first certified as a HUBZone eligible firm and continued to live at that same location while the area transitioned to a Redesignated Area cannot be considered a Legacy HUBZone Employee if that individual moves to a non-HUBZone area. SBA proposed to clarify that an individual who qualifies as a HUBZone employee for the first time while living in a Redesignated Area cannot later be deemed a Legacy HUBZone Employee. Third, SBA proposed to specify that a certified HUBZone small business may only have one legacy HUBZone employee at a given time. SBA supports the growth of individual HUBZone employees and allowing such employees to improve their personal residential situation. However, SBA is concerned that the Legacy HUBZone Employee concept could be abused. Without a limit on the number of Legacy HUBZone Employees permitted by SBA, a firm could potentially move all individuals into a HUBZone for a one-year period and qualify all of those individuals as Legacy HUBZone Employees without those individuals ever intending to live long-term in the HUBZone area. SBA sought comments on: what the limit on Legacy HUBZone Employees should be and whether there should be any other limitations; whether SBA should limit the duration of Legacy HUBZone employee status to a certain number of years, and if so, how many years would be appropriate; whether individuals who were students when they resided in a HUBZone should be eligible for treatment as Legacy HUBZone Employees; whether Legacy Employees should be limited to full-time employees only; and whether an owner of the concern should be able to qualify as a Legacy HUBZone Employee. SBA is concerned that not imposing some restrictions on Legacy Employees could open the provision to abuse. The purpose of this provision is to allow HUBZone firms to retain employees who have managed to improve their position and move out of a HUBZone. This purpose is not relevant to many owners of HUBZones because they are not at risk of being fired for moving out of a HUBZone.

The majority of comments opposed the proposed limitations on the number of ''Legacy HUBZone Employees.'' Many commenters argued that the proposed limitations would negatively impact businesses that rely on a broader pool of legacy employees for stability and workforce retention, especially in light of HUBZone redesignations. Commenters argued that restricting legacy employees to one per firm would punish HUBZone companies for successfully retaining staff, discourage employee development, and create unnecessary administrative burdens. They emphasized that companies have relied on the legacy employee provision as it was originally written and that reducing the number of eligible legacy employees would harm long-term employee retention and growth. Some commenters pointed out that limiting legacy employees disproportionately affects smaller firms with fewer employees, making it harder for them to meet the HUBZone requirements while maintaining staff. Commenters suggested several alternatives, such as allowing up to 50% of a firm's employees to be legacy employees, or implementing a scalable approach based on company size. There was also support for grandfathering existing legacy employees and suggestions that the legacy designation should be based on the duration of time an employee has worked in a HUBZone, not just their residency status. Many commenters opposed limiting the duration of legacy status or suggested that it should match the amount of time an employee lived in a HUBZone. A few argued for a a specific timeframe, such as five years, to provide stability for businesses. Overall, there was significant concern that restricting legacy employees contradicts the intent of the HUBZone program. These commenters believed that hiring an individual that lives in an area of high unemployment or low income (*i.e.,* a HUBZone) and providing that individual with a good salary that enables the individual to move to a better neighborhood should be celebrated as a success of the HUBZone program, and should not be discouraged. One commenter stated that a HUBZone firm may be forced to fire a good employee in order to remain eligible for the program because that employee moved to a better neighborhood due to the success of the HUBZone program.

The comments were mixed on whether to limit legacy employee status to full-time employees only, excluding students who lived in a HUBZone while attending school, and whether business owners should be considered legacy employees.

Based on the comments received, SBA has decided not to limit firms to only one Legacy HUBZone Employee. Instead, this final rule provides that a HUBZone small business concern may have up to four Legacy HUBZone Employees at a given time, but must have at least one other HUBZone employee in order for any employee to count as a Legacy HUBZone resident employee. This means there could never be a scenario where a HUBZone firm has zero employees residing in HUBZones. In addition, the final rule provides that an individual who initially qualified as a HUBZone Resident Employee by residing in a Redesignated Area or a Qualified Disaster Area will not qualify as a Legacy HUBZone Employee and that individuals who work fewer than 30 hours per week at any time during their employment with the HUBZone concern cannot qualify as Legacy HUBZone Employees. Of course, that would not include normal time off for vacation or sick leave (including extended time off for maternity/paternity leave). SBA believes this compromise strikes the right balance between the concern related to risk that were raised in the proposed rule and the concerns raised in the comments.

SBA proposed to revise § 126.200(e), which addresses the ''attempt to maintain'' requirement, to clarify when HUBZone firms must certify that they will attempt to maintain compliance with the 35% HUBZone residency requirement during the performance of a HUBZone contract. The proposed rule provided that firms must make this certification when they apply for HUBZone certification, at the time they complete their recertification, and at the time of offer for any HUBZone contract. SBA received one comment on this change, which requested that SBA clarify how it intends to monitor and enforce the ''attempt to maintain'' requirement for contracts that count toward agency HUBZone goals but are not HUBZone set-asides (such as subcontracts). The commenter urged SBA to ensure consistent oversight across all types of HUBZone contracts, including subcontracts. In response to this comment, SBA notes that the ''attempt to maintain'' requirement is statutory, and is specifically tied to HUBZone set-asides, HUBZone sole source contracts, and contracts where the HUBZone price evaluation preference is applied. Thus, this final rule does not expand the ''attempt to maintain'' requirement to HUBZone subcontracts or to non-HUBZone contracts for which a procuring agency takes goaling credit as an award to a HUBZone small business concern. SBA has clarified this in the definition of ''attempt to maintain'' in § 126.103 by specifying that the requirement applies only during the performance of a

HUBZone contract as defined in § 126.600. SBA has also clarified in this final rule that the 20% floor described in the definition of ''attempt to maintain'' is not an automatic substitute for the 35% HUBZone residency requirement. Specifically, this final rule adds a sentence to the definition of ''attempt to maintain'' stating that a firm that cannot demonstrate that it is making the ''substantive and documented efforts'' described in the definition of ''attempt to maintain'' has failed to attempt to maintain the HUBZone residency requirement.

SBA proposed to amend § 126.200(f) to provide that HUBZone firms must certify that they will comply with the applicable limitations on subcontracting requirements when they apply for HUBZone certification, and at the time they complete their recertification. The proposed rule also provided that certified HUBZone small business concerns also agree to comply with the limitations on subcontracting requirements under FAR clause 52.219–14, Limitations on Subcontracting, by submitting an offeror for and executing a HUBZone contract. SBA received one comment on proposed § 126.200(f), which provided that if the requirement to maintain compliance at the subcontracting level applies, then the flexibility granted through the ''attempt to maintain'' provision should also be extended to these subcontracts. As discussed above, this final rule does not extend the ''attempt to maintain'' provision to HUBZone subcontracts. In reviewing this provision, SBA believes that it is not necessary to require a certification relating to the limitation on subcontracting requirements that apply to possible future HUBZone contracts. By statute and applicable contract clauses, the limitations on subcontracting apply to all HUBZone contracts. SBA does not believe that any benefit is added by requiring firms to certify that they will comply with those requirements at the time of application and recertification. As such, this final rule removes proposed paragraph (f) and the associated burden of requiring another certification.

Finally, SBA proposed to revise § 126.200(g) (regarding suspension and debarment) to clarify that neither a concern nor any of its owners may have an active exclusion in SAM at the time of application or at any time while the concern is HUBZone-certified. Because of the elimination of paragraph (f) identified above, the final rule moves the provisions regarding suspension and debarment from § 126.200(g) to § 126.200(f). SBA received one comment on this proposed amendment, which supported the change but also suggested specifying that affiliates of excluded entities cannot be HUBZone-certified. SBA notes that a suspension or debarment action specifically identifies the entities and individuals involved in those entities that are excluded in SAM. The fact that a business concern may be somehow affiliated with a business concern that has been suspended or debarred does not automatically make the affiliated business ineligible for Government programs and assistance. A Suspension and Debarment Official has discretion to suspend or debar affiliated companies where it makes sense to do so. Where the Suspension and Debarment Official does not suspend or debar an affiliated business concern, that business concern remains eligible for Government programs and assistance. SBA does not believe it would be consistent with the debarment and suspension regulations to render all possible affiliates ineligible for SBA's programs where they themselves have not been suspended or debarred.

Section 126.201

SBA proposed to amend § 126.201 by refining the language explaining the ownership requirements for HUBZone small business concerns. The current regulations provide: ''An owner of a SBC seeking HUBZone certification or a qualified HUBZone SBC is a person who owns any legal or equitable interest in such SBC.'' SBA proposed to rephrase this sentence to read: ''For purposes of qualifying for HUBZone certification, SBA considers any person who owns any legal or equitable interest in a concern to be an owner of the concern.'' This change is intended only to make this section clearer and easier to read, without changing the meaning or intent of the provision. SBA received no comments on this proposed amendment and adopts it as final in this rule.

Section 126.204

SBA proposed to revise § 126.204(a) to specify that a HUBZone firm can have affiliates, so long as the firm and its affiliates in the aggregate qualify as small in at least one NAICS code listed in the HUBZone firm's SAM profile. This clarification is necessary because the current regulation says only that the firm and its affiliates in the aggregate must be small—without specifying that the firms, together, must be small in at least one NAICS code listed in the HUBZone-certified firm's SAM profile. SBA also proposed to amend § 126.204(c) to clarify that SBA reviews the ''totality of circumstances'' when determining whether to aggregate the employees of affiliated companies for purposes of calculating a firm's compliance with the 35% HUBZone residency and principal office requirements. In addition, SBA proposed to add a new paragraph (c)(4) clarifying SBA's current policy that if firms are not considered affiliated for size purposes, their employees generally will not be aggregated for HUBZone purposes.

SBA received three comments on proposed § 126.204, all of which were supportive. One commenter suggested that SBA should also explain how SBA will treat employees of a parent, subsidiary or sister entity for HUBZone purposes. The commenter noted that such firms would be affiliated under SBA's size regulations, but the commenter believed SBA should not aggregate the employees of a parent, subsidiary, or sister entity for HUBZone program purposes as long as the companies were operating independently. The commenter noted that there is a certain amount of inter-dependence that will always exist between parent/subsidiary/sister entities, such as shared accounting functions and potentially shared management or directors, and it would defeat the purpose of permitting indirect ownership of HUBZone firms if SBA aggregates the employees of parent/subsidiary or sister entities simply because of the types of inter-dependence or overlap between entities that is inherent in the parent/subsidiary or sister entity relationships. The commenter suggested that SBA should only aggregate the employees of parent/subsidiary or sister entities when the entities go beyond the types of connections that are customary for parent/subsidiary or sister entity relationships and, as a result, the firms are essentially operating as one combined entity without any separation of employees, resources, and facilities. SBA believes that the current regulatory language adequately addresses these concerns. In the entity-owned small business context (*i.e.,* Tribe, ANC, or NHO), a firm is generally not considered to be affiliated with its parent or sister companies. As noted above, the rule provides that if firms are not considered affiliated for size purposes, their employees generally will not be aggregated for HUBZone purposes. For other affiliated companies, although their receipts or employees will be aggregated for size purposes, the employees will not be aggregated for HUBZone residency requirements as long as there is a clear line of fracture between the concern seeking HUBZone status and its affiliates. In addition,

current § 126.204(c)(2) specifically provides that ''[t]he use of common administrative services between parent and/or sister concerns by itself will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.''

Sections 124.203, 126.302, 126.303, 127.301, 127.302, 128.301

Sections 126.302 and 126.303 provide general guidance on applying to SBA to be certified as a HUBZone small business concern. Section 124.203 provides similar guidance for applying to the 8(a) BD program; sections 127.301 and 127.302 do so for the WOSB program and section 128.301 does the same for applying to the VetCert program. The current regulations for the 8(a) BD, HUBZone and WOSB programs require that an application must be electronically signed by a specified individual (by each individual claiming social and economic disadvantage status for the 8(a) BD program and by an officer of the concern who is authorized to represent the concern for the HUBZone and WOSB programs). The proposed rule changed that language to provide instead that the individual(s) upon whom eligibility is based take responsibility for the accuracy of all information submitted on behalf of the applicant. The proposed rule added similar language to § 128.301 for the VetCert program. SBA received two comments supporting this change without substantive comment and SBA adopts the proposed language as final.

Section 126.304(e)

SBA proposed to amend § 126.304(e) to clarify the records that HUBZone participants must maintain to ensure continued eligibility. Specifically, the proposed rule clarified that HUBZone small business concerns must retain documentation related to any ''Legacy HUBZone employees'' in order to demonstrate that individuals being claimed as Legacy HUBZone employees meet the requirements (*i.e.,* 180 days of HUBZone residence after the firm's certification or recertification date, and uninterrupted employment). SBA received one comment on this section, which was supportive of the clarification, and is implementing it as proposed.

Section 126.306(h)

SBA proposed to amend § 126.306 by adding a new paragraph (h) to make clear that SBA's decision to approve or deny an application to the HUBZone program is the final agency decision. This is a clarification of SBA's long-standing policy. There is no reconsideration or appeal process because declined applicants are permitted to reapply to the HUBZone program 90 days after receiving the decline decision. SBA received four comments on this proposed clarification, all of which were supportive. However, one commenter expressed concern about situations where errors are made during the certification process, particularly in light of the rollout of SBA's new certification platform, where less experienced analysts would be evaluating HUBZone certifications and could be more prone to mistakes. The commenter suggested applying this provision to first-time applicants only, and allowing firms that are denied based on ownership or size the opportunity to appeal. After reviewing the comments, SBA is implementing this section as proposed. SBA first notes that any firm that is denied HUBZone certification based on SBA's determination that the firm does not qualify as a small business concern may currently request a formal size determination as authorized by § 121.1001(b)(8). As such, there is no need to specify that first time applicants can ''appeal'' SBA's determination that the applicant does not qualify as small. In addition, SBA believes that treating first-time applicants and returning applicants differently would cause confusion. Further, there are already policies in place to address situations where processing errors take place. Where an error in processing occurs, SBA is able to fix the error without requiring the applicant to wait 90 days to reapply.

Sections 126.309, 126.803, 127.305, and 128.305

SBA proposed to revise § 126.309, which describes when a declined or decertified firm can re-apply for HUBZone certification. The proposed rule maintained the 90-day wait period for firms whose application has been declined, but SBA proposed to eliminate that wait period for firms that have been decertified. When the HUBZone regulations were first implemented, declined or decertified firms were required to wait one year to reapply to the HUBZone program. At that time, SBA chose the one-year period to give small businesses a reasonable period of time within which to make the changes or modifications that are necessary to enable them to qualify for the HUBZone program, and at the same time to allow SBA to administer the HUBZone program effectively with available resources. However, SBA found that in many cases, a small business only had to hire a few additional HUBZone residents to come back into compliance. SBA also found that after the 2010 census, many small businesses had principal offices in HUBZone areas that were expiring and some such businesses may be planning to move to newly-designated HUBZone areas. SBA found that it would not serve the purposes of the program to make such small businesses wait one year to reapply. Thus, in 2011, SBA reduced the wait period to ninety (90) calendar days, to encourage businesses to move into newly designated HUBZones and hire HUBZone residents, which are the two purposes of the statute. SBA also believed that it would create an incentive for small businesses that no longer meet the HUBZone program requirements to voluntarily decertify and then seek eligibility when they come back into compliance. SBA proposed a corresponding change to § 126.803, to provide that a firm that is decertified for any reason (including based on a protest or due to voluntarily withdrawing) can reapply immediately after the decertification is effective. In order to promote consistency across SBA's programs, SBA proposed to make similar changes in § 127.305 for the WOSB program and in § 128.305 for the VetCert program to eliminate the 90-day wait time to reapply for certification in those programs after it has been decertified.

SBA received three comments on these proposed changes. One commenter opposed maintaining the 90-day wait after decline, arguing that certification is often declined due to minor or inaccurate reasons that can be quickly resolved. The commenter also expressed concern that combined with processing times, a 90-day waiting period could cause unnecessary loss of contracting opportunities. The commenter recommended that the 90-day waiting period be eliminated altogether. One commenter supported the proposed changes and thought that it made sense to align the rules for all of SBA's certification programs. SBA notes that changes can be made to an application during SBA's processing of the application. If SBA has identified a ''minor'' or ''inaccurate'' reason for decline, that reason can be overcome before a final eligibility determination is made. As such, the final rule retains the 90-day waiting period after a concern is declined certification.

Section 126.401

SBA proposed to revise § 126.401, which describes program examinations. The proposed rule explained that a

program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of the HUBZone application process, as part of the recertification process, or in connection with a HUBZone contract. The current regulation does not specify that program examinations may be conducted to verify the accuracy of certifications made in connection with HUBZone contracts. This addition is necessary because this final rule requires a HUBZone small business concern to meet the 35% HUBZone residency and principal office requirements on the date it submits an offer for a HUBZone contract, and SBA needs a mechanism to enforce this requirement. SBA did not receive any comments on this proposed revision.

Section 126.403

SBA proposed to amend § 126.403(a) to clarify that a program examination may include a site visit. The current regulations describing program examinations provide that ''SBA may conduct a program examination, or parts of an examination, at one or more of the concern's offices.'' In order to conduct a program exam at ''one or more locations,'' implicit in that language is the authority to conduct site visits. The proposed rule merely explicitly set forth that authority. SBA notes that site visits are just one potential facet of a program examination and not all program examinations include site visits. The proposed rule added a sentence to § 126.403(b) clarifying that the burden of proof to demonstrate eligibility is on the concern subject to the program examination.

SBA did not receive any comments on the proposed revisions and adopts them as final in this rule.

Section 126.404

SBA proposed to amend § 126.404, which identifies the possible outcomes of a program examination. The proposed rule revised paragraphs (b) and (c) to eliminate the discussion of program examinations on applicants and to clarify that where a firm is found ineligible pursuant to a program examination, SBA will suspend the firm's eligibility as a certified HUBZone small business concern for a period of 30 calendar days to allow the firm to submit sufficient documentation showing that it was in fact eligible on the date of review. During the 30-day suspension period, the firm is ineligible to submit offers for or be awarded HUBZone contracts. Where the firm fails to submit documentation sufficient to demonstrate its eligibility by the last day of the 30-day period, the firm will be decertified. SBA will remove a firm's certification in DSBS as a certified HUBZone small business concern during the 30-day suspension period. SBA may also identify such suspension actions on its website to ensure that relevant contracting officers are aware of any a firm's current ineligibility. Prior to this rule, SBA has not formally removed firms' HUBZone status in DSBS during this 30-day period. However, SBA believes that in order for the statutory requirement to be enforceable, SBA must remove a firm's certification in DSBS during the 30-day suspension period. In addition, the proposed rule provided that the firm must provide written notice of the concern's ineligibility to the contracting officer for any pending HUBZone award. If SBA overturns its determination, SBA will reverse the firm's decertification and reinstate its certification.

SBA received one comment on this proposed amendment. The commenter supported the proposed decertification process for firms found ineligible during program exams because it enhances transparency and compliance with statutory requirements and is a fair approach that protects legitimate HUBZone businesses. The final rule further clarifies this statutory provision by specifically stating that SBA will remove a firm as a certified HUBZone small business concern on DSBS during the 30-day suspension period.

Sections 126.500 and 126.602

SBA proposed to revise §§ 126.500, 126.601, and 126.602 to eliminate the one-year certification rule and instead require firms to be eligible on the date of offer for HUBZone contracts and only recertify once every three years. SBA's regulations in effect before this final rule required a certified HUBZone small business to annually recertify its HUBZone status to SBA. Under those rules, once a firm annually recertified its HUBZone status, it generally could submit offers for HUBZone contracts for one year without being required to meet the 35% HUBZone residency and principal office requirements at the time of offer. Thus, those regulations set one point in time—the date of certification or the certification anniversary date—as the time at which a firm must be eligible for a HUBZone contract. In addition, if a firm was eligible as of its certification or certification anniversary date, it remained eligible for HUBZone contracts for a period of one year from that date regardless of whether the firm falls out of compliance with the HUBZone eligibility requirements throughout the year. SBA believes that that process permitted abuses that were not intended for the program. A firm could hire one or more individuals who reside in a HUBZone for four weeks prior to its application for certification and immediately dismiss those individuals from its employ after becoming certified and be eligible throughout the year for HUBZone contracts. Similarly, a firm could again re-hire one or more individuals who reside in a HUBZone for four weeks prior to its certification anniversary date and immediately release those individuals after the certification anniversary date and be eligible for additional HUBZone contracts for another year. SBA believes that that was not the intent of the program.

Thus, SBA proposed to revise § 126.500 to eliminate the ''one-year certification'' rule and instead require firms to recertify to SBA every three years. SBA believes annual recertification is not necessary, and would impose undue burdens on HUBZone small businesses, if firms are also required to be eligible at the time they submit offers on any HUBZone contracts, as discussed further below. Moreover, SBA believes that uniformity among its contracting programs is an important goal, and SBA's WOSB and VetCert programs require firms to recertify their status every three years. Some commenters opposed a triennial recertification requirement and believed it would not be sufficient to help firms maintain compliance after winning a HUBZone contract. However, the majority of commenters supported the proposed move to triennial recertification. This final rule implements a triennial recertification requirement, bringing the HUBZone program in line with SBA's other certification programs.

Proposed § 126.500(a)(1)(i) provided that, in order to recertify, a HUBZone firm that did not receive a HUBZone contract during the year preceding its recertification date must represent that, at the time of its recertification, at least 35% of its employees reside in HUBZones and the concern's principal office is located in a HUBZone. SBA did not receive any comments on this proposed provision and is implementing it as proposed.

Proposed § 126.500(a)(1)(ii) provided that a HUBZone firm that was awarded a HUBZone contract during the year preceding its recertification date would have to represent that, at the time of its recertification, it is attempting to maintain compliance with the 35% HUBZone residency requirement and the concern's principal office is located in a HUBZone. SBA has found that the

HUBZone Program goals are not sufficiently fulfilled by how the ''attempt to maintain'' requirement is currently being implemented. Under the current rules, a HUBZone firm can have less than 35% HUBZone residents at the time of its recertification if the firm is performing a HUBZone contract. This means that a firm being awarded HUBZone contracts potentially never has to demonstrate that it is employing at least 35% HUBZone residents. SBA believes that an indefinite period of allowing a HUBZone small business concern to fall below the 35% residency requirement is contrary to the purpose of the HUBZone Program. SBA believes that the intent of the program would be better fulfilled by giving firms a specific ''grace period'' after they are awarded a HUBZone contract during which time they can take the necessary steps to hire enough HUBZone residents to get back up to 35% HUBZone residency. If a firm's recertification falls within this grace period, then such firm's recertification would require the firm to represent that it is ''attempting to maintain'' compliance with the 35% HUBZone residency requirement. After the grace period, then such firm would have to be back up to 35% HUBZone residency at the time of any recertification. SBA proposed that the grace period be 12 months following the award of a HUBZone contract. The proposed rule also included this requirement in proposed § 126.602.

SBA received thirty comments on proposed §§ 126.500(a)(1)(i) and 126.602, the majority of which were supportive. Many commenters supported a 12-month grace period, noting that it would provide the necessary flexibility for staffing adjustments. They suggested that this flexibility is vital for firms to comply with the rule without causing undue strain on their operations. Several commenters agreed that HUBZone firms should eventually have to meet the 35% requirement but argued that one year from the contract award was too short. A few suggested extending the timeframe to 18 months or two years. Some commenters suggested that the award of subsequent HUBZone contracts should extend the time to come into compliance with the 35% requirement, arguing that this would help businesses manage multiple contracts without the burden of quickly meeting the 35% employee threshold and would provide more time to adjust staffing levels without compromising quality or making rushed hiring decisions. In response to these comments, SBA has decided to implement the 12-month grace period. The final rule provides that where a certified HUBZone small business concern was awarded a HUBZone contract during the ''12-month period preceding its recertification'' it can represent that it is attempting to maintain compliance with the 35% HUBZone residency. That language is not limited to the first HUBZone contract received by a certified HUBZone small business concern. As long as the concern received any HUBZone contract during the 12-month period preceding its recertification, it can represent that it is attempting to maintain compliance with the 35% HUBZone residency. In effect, that language allows each additional HUBZone award to trigger a new 12-month grace period from the date of award of the additional HUBZone contract.

Proposed § 126.500(a)(2) provided that a concern's recertification must be submitted within 90 calendar days before the triennial anniversary of its HUBZone certification date. SBA received two comments on proposed § 126.500(a)(2). One commenter opposed the recertification deadline of 90 days before triennial anniversary and the removal of 30 day post-certification date grace period, believing this change would lead to (1) firms certifying compliance before being able to comply (since companies cannot attest to meeting the HUBZone requirements 90 days before their recertification date as the measurement period for HUBZone employees will not have started), and (2) firms having to rush to compile information for certification in the days leading up to the certification date. Instead, the commenter suggested that SBA allow HUBZone firms the additional time they currently have to compile information so that they can ensure they meet all program requirements. The other commenter requested clarification of the 90-day recertification window—specifically, if the HUBZone firm would be responsible for initiating recertification, and if so, whether SBA would send out reminders about a firm's upcoming recertification. Regarding the first comment, SBA concurs with the concerns raised by the commenter and clarifies this requirement in this final rule. Specifically, the final rule makes clear that when a HUBZone firm recertifies its HUBZone status during the 90 days prior to its certification anniversary date, it will be recertifying its eligibility as of the date it makes that recertification. This is a change from the current rules, which require firms to recertify their status as of their anniversary date. Since this final rule eliminates the one-year certification rule, there is no longer a need for firms to recertify their status as of their exact anniversary date. By giving firms a 90-day window in which to complete this recertification, SBA believes firms will have sufficient time to gather and review their payroll records to ensure that they indeed meet the HUBZone requirements before recertifying. In addition, in response to the concern that firms would recertify prior to being able to comply, SBA does not see the concern the commenter does. Recertifying ''early'' does not benefit the firm. The final rule eliminates the provision giving eligibility for the remainder of the year after recertification. Under the provisions set forth in the final rule, a firm must be eligible on the date it submits an offer for a HUBZone contract. Whether it recertified early or on time does not change this requirement. If the firm is not HUBZone eligible on the date it submits its offer for a HUBZone contract, it will not be eligible for that contract. Regarding the second comment, SBA will continue its current practice of sending out reminders to HUBZone firms notifying them of their upcoming recertification deadline and corresponding 90-day window. Firms will be responsible for completing the recertification process at any time during that 90-day period. For consistency purposes, this rule also amends § 128.306(d) to provide that same 90-day period for the VetCert program.

Proposed § 126.500(a)(3) provided that a firm that fails to recertify will be proposed for decertification. SBA requested comments on whether such firms should be decertified automatically within a certain timeframe (such as 30 days) of failing to recertify. SBA received three comments on this, two of which supported automatic decertification because it encourages accountability. One commenter noted that this policy should be consistent across all SBA programs and stated that 30 days seemed like a fair amount of time. Another commenter supported a 30-day grace period before decertification, noting that this would allow firms to address problems or submit recertification paperwork, without unduly penalizing them. One commenter opposed automatic decertification, stating that it would not be in the best interests of the government or the industrial base. In response to the comments, the final rule

provides that if a concern fails to recertify, SBA will decertify the concern at the end of its eligibility period. However, if a concern is able to recertify its eligibility within 30 days of the end of its eligibility period, SBA will reinstate the firm as a certified HUBZone small business concern. Thus, this final rule removes the proposed decertification step, which SBA has found to create an unnecessary administrative burden in most cases, but continues to provide due process to firms by creating a 30-day grace period which allows firms to recertify and come back into compliance with SBA's regulations. This final rule also amends § 127.400(b) and § 128.306(a) for the WOSB and VetCert programs, respectively, to ensure consistency between the programs.

SBA proposed to revise § 126.500(b) to explain that SBA will conduct a program examination of each certified HUBZone small business concern at least once every three years to ensure continued program eligibility, but SBA may conduct more frequent program examinations using a risk-based analysis to select which concerns are examined. This is SBA's current policy, and the proposed rule was intended to make this policy clearer. Frequency of program exams is not specified in statute, so this final rule aligns the HUBZone program with the other three programs, which conduct program examinations using a risk-based approach to determine which firms are examined. SBA has found that resources are not well-spent conducting exams on low-risk firms. This change will reduce the burden on small businesses that are not obtaining Federal contracts, improve the experience of small businesses with multiple certifications by making the requirements consistent across programs, and reduce the impact on SBA staffing because the HUBZone program will perform roughly 500 exams per year, rather than 1,500 per year. SBA received two comments in response to proposed § 126.500(b), both of which were supportive. One commenter requested clarification of how ''risk-based'' will be defined and suggested that the analysis should also examine subcontracting agreements. Another commenter recommended that in conjunction with triennial recertification with full document review, SBA conduct annual check-ins and site visits as needed. Risk-based program examinations will utilize contract data to determine which firms have been awarded contracts as a measure of risk to the government. Regarding the recommendation for annual ''check-ins,'' SBA believes that the risk-based program examinations provide sufficient assurance against fraud, waste, and abuse, and annual reviews for all firms in the portfolio would create unnecessary paperwork and administrative burdens for both small businesses and the government, without providing enough of a benefit justify the cost. Thus, this final rule implements § 126.500(b) as proposed.

Section 126.501

SBA proposed to revise § 126.501 in its entirety to address a certified HUBZone small business concern's ongoing obligations to SBA (which is what this section addressed prior to the 2019 rule change). First, proposed § 126.501(a) provided that a certified HUBZone small business concern that acquires, is acquired by, or merges with another business entity must provide evidence to SBA, within 30 calendar days of the transaction becoming final, that the concern continues to meet the HUBZone eligibility requirements. A concern that no longer meets the requirements may voluntarily withdraw from the program or it will be removed by SBA pursuant to program decertification procedures. This is SBA's current policy, but the current regulations only require a firm to notify SBA via email where it is involved in a merger or acquisition and do not explain what happens after such notification. SBA received two comments on this proposed provision. One commenter opposed recertification after a merger or acquisition generally because that could result in a firm being ineligible for orders issued under a multiple award contract. The concern raised by this comment was discussed above in response to comments pertaining to § 125.12. The other commenter questioned whether it is still necessary for HUBZone firms to report mergers and acquisition if the program is now proposing eligibility at the time of offer. As noted in SBA's response to the comments pertaining to § 125.12, recertification is necessary for both possible ineligibility for future orders and for procuring agency goaling purposes (*i.e.,* a procuring agency cannot count an order or an option under a multiple award contract as a HUBZone award if the firm is no longer HUBZone eligible).

Proposed § 126.501(b) provided that a certified HUBZone small business concern that is performing a HUBZone contract and fails to ''attempt to maintain'' the minimum employee HUBZone residency requirement must notify SBA via email to *hubzone@sba.gov* within 30 calendar days of such occurrence. A concern that cannot meet the requirement may voluntarily withdraw from the program or it will be removed by SBA pursuant to program decertification procedures. SBA received three comments on proposed § 126.501(b), all of which opposed the provision. One commenter disagreed with the requirement, arguing that it poses a significant compliance burden. Another commenter noted that the provision was overly harsh because a firm could temporarily appear to not comply with the attempt to maintain requirements but could correct that through its marketing efforts before it submits an offer for another HUHZone contract. The firm believed that decertifying a firm before it had the full opportunity to come back into compliance was wrong. SBA agrees. The firm will not be eligible for any HUBZone contract if it does not comply with the ''attempt to maintain'' requirements at time of offer, and will be decertified if it does not comply with those requirements at the time of recertification. SBA believes that is sufficient and deletes the language set forth in proposed § 126.501(b) in this final rule.

Section 126.503

SBA proposed to add a new paragraph (d) to § 126.503, clarifying that SBA will decertify a HUBZone small business concern that is debarred from Federal contracting without first proposing the firm for decertification. This is merely a clarification of an existing policy. Once a firm has been debarred, it is ineligible for all Federal contracts and subcontracts and thus there is no benefit to being HUBZone-certified. SBA received 18 comments on this proposed change, all of which were supportive. SBA is implementing this change as proposed.

Section 126.504

SBA proposed to amend § 126.504(a) to add that SBA will remove a firm's HUBZone designation if the firm has been debarred from government contracting pursuant to the procedures in FAR 9.4. This change is consistent with the addition of a new paragraph (d) to § 126.503, discussed above. In addition, SBA proposed to revise § 126.504(c) to clarify that once SBA decertifies a firm from the HUBZone program, that firm is ineligible to submit offers for HUBZone contracts. The current regulations provide that a firm is ineligible when it is ''removed as a certified HUBZone small business concern in DSBS.'' However, there are occasional lags between SBA's decertification action and updates to

DSBS, as well as potential errors in updates to DSBS. SBA believes that the effect of decertification should more properly be contained in § 126.503. As such, the final rule moves proposed § 126.504(c)(1) to redesignated § 126.503(e) in this final rule. In addition, the final rule moves proposed § 126.504(c)(2), which provides that as long as a concern was a certified HUBZone small business and met the HUBZone requirements as of the date of its initial offer for a HUBZone contract, it may be awarded a HUBZone contract, to a new § 126.601(a)(5).

Section 126.600

Section 126.600 defines what qualifies as a ''HUBZone contract.'' SBA proposed to amend this section to clarify that a contract awarded to a joint venture may be considered a HUBZone contract if the joint venture meets the requirements in § 126.616. In addition, SBA proposed to clarify that the rules in Part 126 apply only to HUBZone prime contracts, and not to subcontracts awarded to HUBZone small businesses. SBA also proposed to add a new paragraph clarifying that orders awarded under a multiple award contract that was itself a HUBZone set-aside are considered HUBZone contracts. SBA did not receive comments on these proposed clarifications. However, in response to other comments received, this final rule also adds a paragraph clarifying that orders set-aside for certified HUBZone small business concerns under a multiple award contract that was awarded as a small business set-aside are considered HUBZone contracts.

Section 126.601

SBA proposed to revise § 126.601(a) to specify that an offeror on HUBZone contract must be HUBZone-certified and meet the HUBZone eligibility requirements as of the date of its initial offer. As discussed above, this proposed change was made in conjunction with the proposed elimination of the ''one-year certification'' rule and proposed return to triennial recertification. SBA proposed to clarify that a HUBZone firm must be HUBZone-certified on the date of its offer to highlight that for the HUBZone program—unlike the WOSB Program—a firm cannot submit an offer on HUBZone contract while its application is still pending.

SBA received 28 comments on SBA's proposal to require that HUBZone firms be eligible on the date of their initial offer. The comments reflected a mix of support and opposition. Those who opposed this change argued that it imposes significant burdens on HUBZone firms, citing unpredictable contract timelines and the challenge of maintaining compliance with the 35% HUBZone residency requirement. Many noted that the timing of contract opportunities is out of their control, with firms unable to plan ahead due to the variability in solicitation release dates, offer deadlines, and award timelines. They argued that this uncertainty could lead to frequent disruptions in eligibility. Opponents also expressed concerns about the increased administrative burden that would come with recertifications at the time of offer. They noted that this proposed requirement would require HUBZone firms to continuously evaluate their HUBZone eligibility as they prepare for each contract opportunity, creating a compliance burden that ultimately could discourage participation in the program. Additionally, they argued that this change would introduce unnecessary risks to the procurement process, as businesses may not know when an offer date will occur and could waste resources preparing proposals without knowing if they meet eligibility criteria. They argued that this uncertainty could also affect competition, with the potential for more protests and fewer HUBZone set-asides. Several commenters suggested alternatives, such as allowing recertification upon contract award instead of at the time of offer. Some believed this would reduce the administrative burden on both businesses and the government and still promote program integrity. Others proposed allowing a grace period or certification window for HUBZone businesses to adjust to workforce changes or other temporary fluctuations in eligibility. Some commenters urged SBA to maintain flexibility for competitive contracts, while keeping stricter compliance checks for sole source contracts. On the other hand, a number of commenters supported the provision to require eligibility at the time of offer, arguing that it ensures transparency and consistency with other small business programs. SBA is not swayed by the comments stating that firms do not know when a HUBZone opportunity will arise and, correspondingly, when an offer for a HUBZone opportunity must be submitted. These comments presume that maintaining at least 35% HUBZone resident employees is not important, and that as long as the firm did so at one point in time (*i.e.,* the date of certification or recertification), it is free to ignore that requirement for the rest of the year. SBA does not believe that is in line with the intent of the program. One of the purposes of the program is to promote serious, meaningful employment of individuals residing in areas of high unemployment or low income (*i.e.,* in HUBZones). That purpose should be paramount throughout the year, not merely at the time of recertification. If a firm knows that it must comply with the 35% residency requirement at the time it submits an offer for a HUBZone contract, maintaining that 35% will be something the firm tries to do throughout the year. SBA believes that is what the program intended. SBA also continues to believe that requiring HUBZone firms to be eligible at the time of offer is essential for increasing uniformity among the agency's contracting programs. As such, the final rule requires a firm to be eligible at the time it submits its initial offer, including price, for a HUBZone contract.

Proposed § 126.601(a)(2) provided that for a multiple award contract, where concerns are not required to submit price as part of the offer for the contract, an offeror must be identified as a certified HUBZone small business concern in DSBS (or successor system) and meet the HUBZone requirements in § 126.200 on the date of initial offer, which may not include price. This is consistent with SBA's size regulations at § 121.404(a)(1)(iv). SBA did not receive any comments on this particular provision and is implementing it as proposed.

Proposed § 126.601(f) clarified that an offeror on a competitively awarded HUBZone contract need not be eligible on the date of award of such contract. Prior to 2020, SBA's regulations required eligibility for a competitively awarded HUBZone contract both at time of offer and time of award. That caused problems with the procurement process where a HUBZone employee that was counted on for HUBZone eligibility left the firm in the time between the firm's offer and the date of award. The firm could be in the process of hiring a new employee from a HUBZone but if it had not done so by the date of award the firm would be ineligible for award. SBA continues to believe that determining such a firm ineligible for award is inappropriate. There must be certainty to eligibility when a firm submits an offer. As long as a firm is eligible as of the date of its offer for a competitively awarded HUBZone contract, it will be eligible for award. This is similar to the size requirement where a firm must also be small on the date of its offer but may grow to be other than small between the date of its offer and the date of award.

Proposed § 126.601(f) also provided, however, that there is an exception to this rule for HUBZone sole source awards. For a HUBZone sole source award, a firm must be HUBZone-certified at the time of award. SBA believes that sole source procurements warrant stricter eligibility rules. To be eligible for a sole source HUBZone award, a procuring activity must conclude that the firm receiving the award is the only certified HUBZone small business concern that is capable of performing the contract. That requirement by itself is very restrictive, and SBA believes that eligibility should also be restrictive. SBA does not believe that Congress intended to allow a firm that no longer qualifies as a HUBZone small business concern prior to award to be elevated to a status as the only certified HUBZone small business concern that is capable of performing the contract. In addition, this change would align HUBZone sole source awards with how SBA treats sole source awards in the 8(a) BD program. SBA received two comments on proposed § 126.601(f). One commenter supported clarifying that an offeror on a competitively awarded HUBZone contract need not be eligible on the date of award but agreed with the exception for HUBZone sole source awards. The other commenter opposed requiring eligibility at the time of offer and award since, as noted in a prior rulemaking, companies cannot always control for turnover since the timing of award is unknown. SBA has reviewed the comments received and implements the rule as proposed.

Section 126.605

SBA proposed to amend § 126.605 to clarify that this section describes circumstances under which a contracting officer is prohibited from soliciting a requirement as a HUBZone contract. The proposed rule changed the words ''may not'' to ''shall not'' to clarify that a contracting officer does not have discretion to award a HUBZone contract in those specified instances. SBA did not receive any comments on this proposed amendment and implements it as proposed.

Section 126.612

SBA proposed to amend § 126.612 by adding a new paragraph (f) providing that the awardee of a HUBZone sole source contract must be an eligible HUBZone small business concern on the date of award. This has always been the policy for the 8(a) Business Development program (*see* § 124.501(h)), and SBA is trying to make its socioeconomic programs as consistent as possible. SBA received two comments on this section, both of which opposed the change. One commenter believed that annual recertification should be sufficient, because compliance with the 35% requirement can change from one day to another. The second commenter argued that firms lack control over the timing of awards, so they may maintain artificially high staffing overhead while an award is pending, which could ultimately discourage program use. As noted in the discussion pertaining to § 126.601(f) above, because of the restrictive nature of HUBZone sole source contracts, SBA believes that the eligibility for such contracts should also be restrictive. Because of that and SBA's priority to make its contracting programs as uniform as possible, the final rule requires eligibility for sole source HUBZone contracts on the date of award. A firm must not merely be a certified HUBZone small business concern on the date of award for a HUBZone sole source contract, it must actually still meet all HUBZone eligibility requirements. The final rule adds clarifying language to provide that a contracting officer may rely on the firm's status as a certified HUBZone small business concern in awarding a sole source HUBZone contract, but if there is a status protest relating to the apparent successful offeror, SBA will determine whether that firm continues to meet the HUBZone eligibility requirements. Because of the addition of that language, the final rule renumbers the paragraphs contained in § 126.612, with proposed § 126.612(f) becoming § 126.612(a)(6) in the final rule.

Section 126.613

SBA proposed to amend § 126.613, which addresses the HUBZone price evaluation preference (PEP), to clarify how the HUBZone PEP should be applied. The proposed rule explained that to apply the HUBZone PEP, a contracting officer must add 10% to the offer of the otherwise successful large business offeror. Then, if the certified HUBZone small business concern's offer is lower than that of the large business after the HUBZone PEP is applied, the certified HUBZone small business concern must be deemed the lowest-priced offeror. The proposed rule added a sentence specifying that the HUBZone price evaluation preference does not apply where the initial lowest responsive and responsible offeror is a small business concern. It also added language specifying that the HUBZone price evaluation preference does not apply if the certified HUBZone small business concern will receive the contract as part of a reserve for certified HUBZone small business concerns. However, the HUBZone price evaluation preference does apply to the non-reserved portion of a full and open multiple award contract.

The proposed rule also added clarifying language to Example 1 explaining that a non-HUBZone small business concern is not affected by the application of the HUBZone PEP where such non-HUBZone small business is not the lowest offeror prior to the application of the preference. This is because the HUBZone PEP is intended neither to harm nor to benefit a non-HUBZone small business.

The proposed rule amended Example 2 by specifying that, in the example, after the application of the HUBZone PEP, the HUBZone small business concern's offer is not lower than the offer of the large business (*i.e.,* $103 is not lower than $102.3 ($93 × 110%)).

The proposed rule amended Example 3 to clarify that a contracting officer should not apply the HUBZone PEP where the lowest, responsive, responsible offeror is a small business concern, even if a large business concern submitted an offer.

In addition, the proposed rule clarified how the PEP should be applied to a procurement using trade off procedures. The proposed rule stated that for a procurement using trade off procedures, the contracting officer must first apply the 10% price preference to the offers of any large businesses and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation. Where, after considering the price adjustment, the offer of the certified HUBZone small business is determined to be the best value to the Government, award shall be made to the certified HUBZone small business concern. Where evaluation points are given to both the price and technical aspects of an offer and the total evaluation points received by a certified HUBZone small business concern is equal to or greater than the total evaluation points received by a large business after considering the price adjustment, award shall be made to the certified HUBZone small business concern.

SBA received four comments on this section. Several commenters suggested that SBA should explicitly state that the HUBZone PEP applies to all full and open procurements, including those involving orders issued under Indefinite Delivery/Indefinite Quantity (IDIQ) contracts and other procurement vehicles. SBA notes that the HUBZone PEP is a statutory requirement, and thus

SBA does not have the discretion to expand the HUBZone PEP to orders under IDIQ contracts without Congressional action. In general, the commenters agreed with the proposed clarifications on how the HUBZone PEP should be applied, including the examples provided by SBA. One commenter asked for clarification as to whether the applicable limitation on subcontracting and the nonmanufacturer rule applied to contracts for which a certified HUBZone small business concern received the benefit of the HUBZone PEP. Section 126.600(c) specifies that awards through full and open competition after the HUBZone price evaluation preference is applied to an other than small business in favor of a certified HUBZone small business is a HUBZone contract. Since the limitations on subcontracting and the nonmanufacturer rule apply to all HUBZone contracts as they do generally for all small business contracts, they apply to unrestricted contracts where a HUBZone PEP is used. SBA does not believe a specific regulatory provision stating that is needed. Several commenters requested further clarification regarding the application of the HUBZone PEP to mentor-protégé joint ventures, particularly when a large business mentor is performing a significant portion (*e.g.,* 60%) of the contract. They questioned whether it is appropriate to give the large business mentor a price evaluation preference over another large business competing for the same contract, as this could create an unfair advantage and dilute the intent of the HUBZone PEP. SBA agrees that one large business should not be receiving a PEP against another large business. The final rule clarifies that a HUBZone PEP does not apply to a HUBZone joint venture consisting of a certified HUBZone small business concern and its other than small mentor.

Section 126.615

SBA proposed to amend § 126.615 by adding a reference to § 125.9 to clarify that large businesses may participate in HUBZone procurements by serving as SBA-approved mentors under SBA's mentor-protégé program, and by correcting the cross-reference to the limitations on subcontracting. SBA did not receive any comments on this proposed amendment but changes the words ''large business'' to ''other than small business'' in the final rule to reflect SBA's general terminology.

Section 126.616

SBA proposed to amend § 126.616, which describes the circumstances under which a joint venture can be awarded a HUBZone contract. The proposed rule deleted language from current § 126.616(a)(1) stating that a ''joint venture itself need not be a certified HUBZone small business concern.'' SBA proposed to delete this language because it implies that a joint venture could be HUBZone-certified, when in fact the HUBZone program does not certify joint ventures under any circumstances. Instead, proposed § 126.616(a)(1) clarified that SBA does not certify HUBZone joint ventures, but provided that a joint venture should be designated as a HUBZone joint venture in SAM (or successor system), with the HUBZone-certified joint venture partner identified. The proposed rule added a new paragraph (k) providing that a procuring agency may only receive HUBZone credit for an award to a HUBZone joint venture where the joint venture complies with the requirements in § 126.616.

SBA received two comments on this proposed amendment. One commenter supported this change without substantive comment. The second commenter stated that joint ventures should not lose an award if they are not designated in SAM. SBA notes that all offerors, including joint venturers must be registered in SAM at the time of offer. SBA implements this section as proposed.

Section 126.619

As discussed above, this final rule moves all recertification requirements for size and socioeconomic status to a new § 125.12. Section 126.619 refers to the requirements set forth in § 125.12 as applying to recertifications of HUBZone status.

Section 126.701

SBA proposed to amend § 126.701 by removing the words ''these subcontracting percentages'' in the section heading and adding in their place the words ''the limitations on subcontracting'' to clarify the content of the section. SBA received no comments on this proposed revision and adopts it as final in this rule.

Section 126.800

SBA proposed to revise § 126.800 to make the section more readable, to clarify that interested parties may protest a HUBZone joint venture offeror's eligibility for award of a HUBZone contract, and to add a paragraph providing that SBA may protest an apparent successful offeror's status as a certified HUBZone small business concern on a non-HUBZone contract. SBA believes that where there is evidence that a prospective awardee claiming status as a certified HUBZone small business does not meet the HUBZone requirements, there should be the ability to protest the firm's HUBZone status, even for a non-HUBZone award. This will prevent an agency from receiving HUBZone credit where the awardee is not eligible for the program. SBA received no comments on this proposed revision and makes minor wording changes to clarify that for other than HUBZone contracts, any offeror for that contract, the contracting officer or SBA may protest an apparent successful offeror's status as a certified HUBZone small business concern.

Section 126.801

In response to the change made to § 126.601(a) requiring a HUBZone small business to be eligible for a HUBZone contract as of the date of its initial offer, the proposed rule made corresponding changes to § 126.801, to recognize that the date of offer would be the relevant date for protesting a HUBZone small business concern's eligibility for award of a HUBZone contract. SBA received no comments on this proposed revision. The final rule adopts the proposed language and adds clarifying language regarding timeliness and where a HUBZone status protest should be filed. The final rule clarifies that an interested party other than a contracting officer or SBA must submit its written protest to the contracting officer. The contracting officer must then forward that protest to SBA at *hzprotests@sba.gov*. A contracting officer can initiate his/her own HUBZone status protest by filing a protest with SBA at that same email address. The final rule also specifies in the general section the current policy that a protest by a contracting officer or SBA challenging the HUBZone status of an apparent successful offeror on a HUBZone contract or of an awardee on a HUBZone contract is always timely. It cannot be premature (*i.e.,* before an apparent awardee has been selected), but it can be at any point after that.

Section 126.803

SBA proposed to amend § 126.803 by revising paragraph (a), which explains the date that will be used to determine a firm's HUBZone eligibility if it is the subject of a HUBZone status protest. Consistent with the proposed requirement that a firm be eligible on the date of offer for a competitive HUBZone contract, proposed § 126.803(a) provided that for all HUBZone contracts other than HUBZone sole source awards, SBA shall determine a protested firm's HUBZone eligibility as of the date of its initial offer that includes price. The proposed

rule provided that for HUBZone sole source awards, SBA would determine a protested firm's HUBZone eligibility as of the date of award.

SBA also proposed to add a new paragraph to § 126.803 providing that the burden of proof to demonstrate eligibility is on the protested concern. This paragraph explained that if a concern does not provide information requested by SBA within the allotted time provided, or if it submits incomplete information, SBA may draw an adverse inference and presume that the information that the applicant failed to provide would demonstrate ineligibility and sustain the protest on that basis. These policies are explained in SBA's protest notification letters, and SBA believes they should also appear in the protest regulations. SBA received no comments on these proposed revisions and adopts them in this final rule. In addition, this final rule adds a paragraph specifying that for two-step or two-phase procurements, SBA will determine the HUBZone small business concern's eligibility as of the date that it submits its initial bid or proposal (which may or may not include price) during phase one. This is to align with § 126.601(e), which addresses two-step procurements.

Section 126.900

SBA proposed to amend § 126.900 by adding a new paragraph (e)(4) providing that if SBA discovers that false or misleading information has been knowingly submitted by a small business concern in order to obtain or maintain HUBZone certification, SBA will propose the firm for decertification. SBA received fifteen comments on this section, all of which were supportive. SBA adopts this proposed revision as final in this rule.

Sections 127.200 and 128.200

In order to be eligible for the 8(a) BD program, SBA requires socially and economically disadvantaged individuals to reside in the United States. *See* 13 CFR 124.101. There currently is not a similar requirement for the WOSB or VetCert programs. SBA believes that qualifying individuals should reside in the United States to more adequately advance the purposes of the programs. The proposed rule added a United States residency requirement for qualifying individuals in the WOSB and VetCert programs. SBA received two comments supporting these proposals without substantive comment and adopts the proposed rule as final.

Section 127.400

Section 127.400 provides guidance as to how a concern can maintain its WOSB or EDWOSB certification. Current § 127.400(b) specifies that a concern must either request a program examination from SBA or notify SBA that it has requested a program examination from a third-party certifier no later than 30 days prior to its certification anniversary. In order to provide consistency between the programs, this rule states that a concern must either recertify with SBA or notify SBA that it has completed a program examination from a third party certifier in the 90 calendar days prior to its certification anniversary. This rule also revises the example set forth in the regulations to take into account the change from 30 days to 90 days.

Section 134.1104

Section 134.1104 sets forth the time limits a VOSB or SDVOSB must appeal an adverse determination finding it ineligible for the VetCert program to SBA's Office of Hearings and Appeals (OHA). Currently, § 134.1104 requires an appeal to be filed within 10 business days of receipt of the denial. When an application for the 8(a) BD program is denied, a firm has 45 days from the date it receives the Agency decision to file an appeal with OHA. *See* 13 CFR 124.206(b). SBA is in the process of establishing a uniform application processing system. That system will allow a firm to simultaneously apply for multiple certifications for which it believes it is eligible. If a firm applied for 8(a) and VetCert certification at the same time and was denied for both programs, the current regulations would require the firm to appeal its VetCert denial withing 10 days while not being required to file its 8(a) eligibility appeal for 45 days. SBA believes that may be confusing to affected applicants and that there should be consistency in the appeal process. As such, this rule changes the time to file an appeal for the VetCert program to 45 days.

Compliance With Executive Orders 12866, 12988, 13132, 13563, the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612):

Executive Orders 12866, 13563 and 14904

Executive Order 12866, ''Regulatory Planning and Review,'' directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563, ''Improving Regulation and Regulatory Review,'' emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14094, ''Modernizing Regulatory Review,'' amends section 3(f) of Executive Order 12866 and supplements and reaffirms the principles, structures and definitions governing contemporary regulatory review established in Executive Order 12866 and Executive Order 13563. The OMB Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a significant regulatory action and, therefore, it was reviewed under subsection 6(b) of E.O. 12866.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

This regulatory action clarifies and streamlines SBA's regulations governing the HUBZone Program and other contracting assistance programs. In 2019, SBA published a comprehensive revision to the HUBZone Program regulations, which implemented changes intended to make these regulations easier to understand and implement. This rule is intended to further clarify and improve policies surrounding some of those changes to ensure that the HUBZone program fulfills its statutory purpose. In addition, SBA has heard from small businesses of a desire for consistency among its contracting assistance programs in order to relieve burdens associated with compliance with multiple programs. As a result, the rule makes several improvements to create uniformity among the programs, including deleting the program-specific recertification requirements contained separately in SBA's size, 8(a) BD, HUBZone, WOSB, and VetCert and moving them to a new section that would cover all size and status recertification requirements.

2. What are the incremental benefits and costs of this regulatory action?

This rule benefits program participants by reducing burdens and increasing consistency with other contracting programs while changing or adding some compliance requirements that strengthen the program's impact and reduce the potential for business policies and practices that are contrary to the goals of the HUBZone program. The reduction of burdens includes the

decrease in the time of proof of residence for employees, removal of the 90-day wait period for reapplication after decertification, revisions to the part of the rule that addresses Governor-designated covered areas, a change in the negative-control rule in SBA's affiliation rule, deletion of program-specific requirements for certification, and triennial instead of annual recertification. Compliance requirements include limits on the number of Legacy Employees, revised requirements for the use of the ''attempt to maintain'' statutory language, and proof of eligibility at the time of offer of a HUBZone contract. These compliance measures are consistent with the program's goal of promotion of growth and impact of small businesses in historically underutilized areas and SBA believes, as outlined below, that they are not substantial burdens.

Benefits

The decrease from 180 days to 90 days for proof of employees' residency allows for firms to enter the HUBZone program more quickly and increases opportunities for newly-hired employees. Both of these results increase accessibility of the program's opportunities. Removal of the 90-day wait period for decertified firms also promotes the program's accessibility because SBA has found that a shorter wait period is consistent with firms' ability to qualify or return to compliance by hiring HUBZone residents or by moving to a newly-designated HUBZone.

The restatement of § 126.104 clarifies existing policy on Governor-designated covered areas, including the condition for annual petitions and a statement of no need for SBA's approval of previously designated covered areas. This restatement decreases uncertainty for firms that participate or plan to participate in the program. The restatement also authorizes the Associate Administrator for Government Contracting and Business Development, or designee, instead of the Administrator to approve covered areas, which will reduce time to approve a petition and facilitate entry into the program.

Amendments to regulations on affiliation will remove inconsistencies with other programs' regulations. The benefit of the amendments is more certainty on measures that minority-share investors can include to protect their investments without a finding of control. This rule further reduces uncertainty in this matter by applying the same language to the 8(a) BD, WOSB and VetCert programs. SBA expects the changes in regulations on affiliation and control and increased consistency among programs to improve the environment for access to capital for small businesses in contracting assistance programs.

The rule returns the HUBZone program to triennial recertification and deletes program-specific recertification requirements. Both of these changes alleviate the burden associated with recertification. With recertification taking about an hour to complete, SBA estimates that the change to triennial recertification will result in an annual reduction in the time burden from recertification of approximately 2,468 hours and about $326,911 in annual savings. SBA has seen a downward trend in the number of HUBZone firms over the years, with lateness in annual recertification as one reason for the trend, so a reduction in this recertification burden may increase the number of HUBZone program participants and, consequently, result in wider economic benefits generated by more HUBZone firms in communities. Deletion of program-specific recertification requirements will also reduce time in recertification. In 2023, SBA sampled several years of data to estimate that about 10% of the firms in the HUBZone program were also in the WOSB program and 15% in the 8(a) program. The eliminated recertification procedures from uniform certification will reduce the time burden by an estimated 617 hours and generate an additional $81,728 in annual savings.

Revisions in Compliance Measures

This final rule revises § 126.200(d)(3) to allow HUBZone firms to retain employees who have move out of a HUBZone but proposes a limitation on the number of these Legacy HUBZone Employees. This is an attempt to balance the needs of employees who move for personal reasons or for professional development with the aims of the program to promote business activity in specific areas. The limitation is a potential source of burden on small business entities but is offset by the economic development from employment of HUBZone residents.

SBA is also adjusting the threshold of 20 percent of employees for ''attempt to maintain'' currently in § 126.500(a)(2) with 35 percent. This increased threshold is a stronger standard but the procedures for demonstrating compliance are not different. Any resulting costs should be balanced against SBA's assessment that HUBZone goals are not sufficiently fulfilled by implementation of the current requirement of 20 percent.

This rule requires any certified HUBZone small business to be eligible as of the date of offer for any HUBZone contract. In Federal Procurement Data System (FPDS) data from previous years, approximately 2,100 new HUBZone contracts were awarded in a fiscal year. SBA estimates it takes approximately 1 hour for a firm to gather proof that it is eligible at the time of offer. Thus, this rule will increase the burden on HUBZone small business concerns by approximately 2,100 hours for an estimated annual cost of $278,166. SBA notes that the number of firms in the program has decreased over the past few years and this number of 2,100 may therefore be too high. SBA also notes that a specific small business entity incurs this burden only when a contract is offered and that, in the aggregate, the burden is balanced by the benefits of consistency of this provision with other contracting programs and maintenance of standards for the integrity of the HUBZone program.

Summary

The changes in this rule clarify and streamline regulations and increase consistency with other contracting programs. Many of the benefits are not quantifiable, but SBA estimates annual savings of about $408,639 from reduced frequency of recertification. Benefits from the changes regarding affiliation and control reduce uncertainty for investors and will therefore have a significant impact on access to capital. The rule contains measures that introduce or strengthen some compliance requirements but these are balanced by the need to maintain the goals and integrity of the program. The one quantifiable burden noted in these compliance measures is proof of eligibility at the time of offer and this is a cost only when the benefit of the offer is present.

3. What are the alternatives to this rule?

SBA considered alternatives to each of the significant changes made by this rule. Instead of requiring HUBZone firms to recertify every three years and be eligible at the time of offer, SBA considered maintaining the current requirement where annual recertification allows a concern to seek and be eligible for HUBZone contracts for a year. However, SBA has found that the annual recertification requirement does not fulfill the purposes of the HUBZone program as effectively as requiring firms to be eligible at the time of offer for HUBZone contracts. Moreover, SBA believes that uniformity among its contracting programs is an important goal, and returning to

triennial recertification and eligibility determinations based on the date of offer would bring the HUBZone program much more in line with SBA's other small business and socioeconomic contracting programs.

This regulatory action is needed to clarify and improve SBA's regulations governing the HUBZone Program and SBA's other socioeconomic contracting programs. In 2019, SBA published a comprehensive revision to the HUBZone Program regulations, which implemented changes intended to make the HUBZone Program more efficient and effective. This rule is intended to clarify and improve policies surrounding some of those changes. The clarifications and improvements are needed to ensure that the rules governing the HUBZone program fulfill its statutory purpose. In addition, SBA has heard from the small business community that improvements are needed to make its socioeconomic contracting programs more uniform, in order to relieve burdens associated with compliance with multiple programs. As a result, this final rule makes several improvements to create uniformity among the programs, including deleting the program specific recertification requirements contained separately in SBA's size, 8(a) BD, HUBZone, WOSB, and VetCert and moving them to a new section that would cover all size and status recertification requirements.

Executive Order 13132

For the purposes of Executive Order 13132, Federalism, SBA has determined that this rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

This rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

In 2019, SBA revised its regulations to give contracting officers discretion to request information demonstrating compliance with the limitations on subcontracting requirements. *See* 84 FR 65647 (Nov. 29, 2019). In conjunction with this revision, SBA requested an Information Collection Review by OMB (Limitations on Subcontracting Reporting, OMB Control Number 3245–0400). OMB approved the Information Collection. This rule does not alter the contracting officer's discretion to require a contractor to demonstrate its compliance with the limitations on subcontracting at any time during performance and upon completion of a contract. The estimated number of respondents, burden hours, and costs remain the same as that identified by SBA in the previous Information Collection. As such, SBA believes this provision is covered by its existing Information Collection, Limitations on Subcontracting Reporting.

Regulatory Flexibility Act, 5 U.S.C. 601–612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The RFA defines ''small entity'' to include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' This final rule concerns various aspects of SBA's HUBZone program, as well as its size, 8(a) BD, WOSB, and VetCert programs. As such, the rule relates to small businesses but would not affect ''small organizations'' or ''small governmental jurisdictions.''

The rule changes clarify and streamline regulations and increase consistency with other contracting programs. Many of the benefits are not quantifiable, but SBA estimates annual savings of about $408,639 from reduced frequency of HUBZone recertification. There are approximately 5,000 small businesses that are listed as certified HUBZone small businesses in DSBS, and under the proposed rule, these firms would only need to recertify every three years, rather than every year. Benefits from the proposed changes regarding affiliation and control reduce uncertainty for investors and may therefore improve access to capital. The rule contains measures that introduce or strengthen some compliance requirements, but these are balanced by the need to maintain the goals and integrity of the program. The one quantifiable burden noted in these proposed compliance measures is proof of HUBZone eligibility at the time of offer and this is a cost only when the benefit of the offer is present. Moreover, this burden is counterweighed by the benefit of making the HUBZone program more consistent with SBA's other socioeconomic contracting programs, which decreases the amount of regulations that small businesses must learn and understand in order to participate in SBA's programs. The other changes that make the programs more consistent, such as consolidating the regulations related to recertification of size and status, only serve to benefit the small businesses that participate in these programs. Based on the foregoing, SBA does not believe that the proposed amendments would have a disparate impact on small businesses or would impose any additional significant costs. For the reasons discussed, SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Government property, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 128

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses Technical assistance, Veterans.

13 CFR Part 134

Administrative practice and procedure, Claims, Confidential business information, Equal access to justice, Equal employment opportunity, Lawyers, Organization and function (Government agencies).

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR parts

121, 124, 125, 126, 127, 128, and 134 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9).

■ 2. Amend § 121.103 by revising paragraphs (a)(3), (h)(3) introductory text, and (h)(3)(i), and adding a new adding paragraph (h)(3)(v), to read as follows:

§ 121.103 How does SBA determine affiliation?

(a) * * *

(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders. However, SBA will not find that a minority shareholder has negative control where such minority shareholder has the authority to block action by the board of directors or shareholders regarding the following extraordinary circumstances:

(i) Adding a new equity stakeholder or increasing the investment amount of an equity stakeholder;

(ii) Dissolution of the company;

(iii) Sale of the company or all assets of the company;

(iv) The merger of the company;

(v) The company declaring bankruptcy;

(vi) Amendment of the company's corporate governance documents to remove the shareholder's authority to block any of (a)(3)(i) through (v); and

(vii) Any other extraordinary action that is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

* * * * *

(h) * * *

(3) *Ostensible subcontractors and unduly reliant managing joint venture partners.* (i) An offeror is ineligible as a small business concern, an 8(a) small business concern, a certified HUBZone small business concern, a WOSB/EDWOSB concern, or a VOSB/SDVOSB concern where SBA determines there to be an ostensible subcontractor. An ostensible subcontractor is a subcontractor that is not a similarly situated entity, as that term is defined in § 125.1 of this chapter, and performs primary and vital requirements of a contract, or of an order, or is a subcontractor upon which the prime contractor is unusually reliant.

* * * * *

(v) A joint venture offeror is ineligible as a small business concern, an 8(a) small business concern, a certified HUBZone small business concern, a WOSB/EDWOSB concern, or a VO/SDVO small business concern where SBA determines that the managing joint venture partner will not perform 40% of the work to be performed by the joint venture.

* * * * *

■ 3. Amend § 121.104 by revising paragraph (a)(1) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) * * *

(1) SBA will consider and generally rely on a concern's Federal income tax return and any amendments filed with the IRS on or before the date of self-certification to determine the size status of the concern. Where a concern may legally exclude certain revenue for tax purposes, SBA will not include that revenue in its analysis. However, SBA may consider other relevant information where there is reasonable basis to believe the tax filings are false.

* * * * *

■ 4. Revise § 121.404 to read as follows:

§ 121.404 When is the size status of a business concern determined?

(a) *General.* A concern, including its affiliates, must qualify as small under the NAICS code assigned to a contract as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer or response which includes price. Once awarded a contract as a small business, a firm is generally considered to be a small business throughout the life of that contract.

(b) *Multiple Award Contracts.* (1) If a single NAICS code is assigned to a multiple award contract as set forth in § 121.402(c)(1)(i), SBA determines size status for the underlying multiple award contract as of the date a business concern submits its initial offer (or other formal response to a solicitation), which includes price, for the contract based upon the size standard set forth in the solicitation for the multiple award contract.

(2) When multiple NAICS codes are assigned to a multiple award contract as set forth in § 121.402(c)(1)(ii), SBA determines size status for the underlying multiple award contract for each discrete category for which an offer is submitted, by applying the size standard corresponding to each discrete category, as of the date a business concern submits its initial offer which includes price for the contract.

(3) Where concerns are not required to submit price as part of the initial offer for a multiple award contract, SBA determines size status for the underlying multiple award contract as of the date a business concern submits its initial offer for the contract, which may not include price.

(c) *Orders and Agreements Established Against Multiple Award Contracts*—(1) *Unrestricted Contracts.* Where an order is set-aside for small business under an unrestricted multiple award contract, SBA determines size status for each order placed against the multiple award contract as of the date a business concern submits its initial offer (or other formal response to a solicitation), which includes price, for each order.

(2) *Set-Aside or Reserved Contracts.* Where an order is issued under a multiple award contract that itself was set aside or reserved for small business (*i.e.,* small business set-aside, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned/economically-disadvantaged women-owned small business), SBA determines size status as of the date a business concern submits its initial offer, which includes price, for the set-aside or reserved multiple award contract, unless a contracting officer requests size recertification with respect to a specific order.

(i) Where a contracting officer requests size recertification with respect to a specific order, size is determined as of the date the business concern submits its initial offer (or other formal response to a solicitation), which includes price, for the order.

(ii) Where a contracting officer requests size recertification with respect to a specific order, size is determined only with respect to that order. Where a contract holder has grown to be other than small and cannot recertify as small for a specific order for which a contracting officer requested recertification, it may continue to qualify as small for other orders issued under the contract where a contracting officer does not request recertification.

(3) *Agreements.* With respect to agreements established under FAR part 13, size is determined as of the date the business concern submits its initial offer, which includes price, for the agreement. Because an agreement is not a contract, the concern must also qualify as small as of the date the concern

submits its initial offer, which includes price, for each order issued pursuant to the agreement to be considered small for the order.

(4) *Exceptions.* (i) For orders or BPAs to be placed against the GSA Federal Supply Schedule (FSS) Multiple Award Schedule (MAS) contract, size is determined as of the date the business concern submits its initial offer, which includes price, for the GSA FSS MAS contract.

(ii) For 8(a) sole source orders issued under a multiple award contract, size is determined in accordance with § 124.503(i)(1)(iv) of this chapter, as of the date the order is offered to the 8(a) BD program, regardless of whether the multiple award contract is unrestricted, set-aside, or the GSA FSS MAS contract.

(iii) Size is determined on the date of recertification when a recertification is required pursuant to §§ 125.12(a) and (b) of this chapter, or on the date of initial offer which includes price if requested by a contracting officer pursuant to § 125.12(c). This exception applies to all provisions of §§ 121.404(a), (b), (c), and (d).

(d) *Eligibility for SBA programs.* A concern applying to be certified as a Participant in SBA's 8(a) Business Development program (under part 124, subpart A, of this chapter), as a HUBZone small business concern (under part 126 of this chapter), as a women-owned small business concern (under part 127 of this chapter), or as a service-disabled veteran-owned small business concern (under part 128 of this chapter) must qualify as a small business as of the date of its application and, where applicable, the date the SBA program office requests a formal size determination in connection with a concern that otherwise appears eligible for program certification. For the 8(a) Business Development program, a concern must qualify as small under the size standard corresponding to its primary industry classification. For all other certification programs, a concern must qualify as small under the size standard corresponding to any NAICS code listed in its SAM profile. SBA will accept a concern's size representation in SAM, or successor system, unless there is evidence indicating that the concern is other than small. SBA will request a formal size determination pursuant to § 121.1001(b)(8) where any information it possesses calls into question the SAM size representation.

(e) *Certificates of competency.* The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(f) *Nonmanufacturer rule, ostensible subcontractor rule, and joint venture agreements.* Compliance with the nonmanufacturer rule set forth in § 121.406(b)(1), the ostensible subcontractor rule set forth in § 121.103(h)(3), and the joint venture agreement requirements in §§ 124.513(c) and (d), §§ 126.616(c) and (d), §§ 127.506(c) and (d), and §§ 125.8(b) and (c) of this chapter, as appropriate, is determined as of the date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.

(g) *Subcontracting.* For subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The applicable size standard is that which is set forth in § 121.410 and which is in effect at the time the concern self-certifies that it is small for the subcontract. A prime contractor may rely on the self-certification of a subcontractor provided it does not have a reason to doubt the concern's self-certification.

(h) *Two-step procurements.* For purposes of architect-engineering, design/build or two-step sealed bidding procurements, a concern must qualify as small as of the date that it certifies that it is small as part of its initial bid or proposal (which may or may not include price).

(i) *Recertification. See* § 125.12 for information on recertification of size and status, and the effect of recertification. None of the exceptions set forth in paragraph (c)(4) of this section have an effect or serve as an exception to whether recertification is required under § 125.12.

(j) *Follow-on contracts.* A follow-on or renewal contract is a new contracting action. As such, size is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price for the follow-on or renewal contract.

■ 5. Amend § 121.702 by revising paragraph (c)(7) to read as follows:

§ 121.702 What size and eligibility standards are applicable to the SBIR and STTR programs?

* * * * *

(c) * * *

(7) *Affiliation based on the ostensible subcontractor rule.* A concern with an other than small ostensible subcontractor cannot be considered a small business concern for SBIR and STTR awards. An ostensible subcontractor is a subcontractor or subgrantee that performs primary and vital requirements of a funding agreement (*i.e.,* those requirements associated with the principal purpose of the funding agreement), or a subcontractor or subgrantee upon which the concern is unusually reliant.

(i) All aspects of the relationship between the concern and the subcontractor are considered, including, but not limited to, the terms of the proposal (such as management, technical responsibilities, and the percentage of subcontracted work) and agreements between the concern and subcontractor or subgrantee (such as bonding assistance or the teaming agreement).

(ii) To determine whether a subcontractor performs primary and vital requirements of a funding agreement, SBA will also consider whether the concern's proposal complies with the performance requirements of the SBIR or STTR program.

(iii) The prime and any small business ostensible subcontractor both must comply individually with the ownership and control requirements in paragraphs (a) and (b) of this section, as applicable.

* * * * *

■ 6. Amend § 121.1001 by adding paragraphs (a)(10) through (12), and (b)(2)(iii) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(10) For orders set-aside for small business, women-owned small business, service-disabled veteran-owned small business, or HUBZone small business under an unrestricted multiple award contract or such orders issued under any type of small business multiple award contract where a contracting officer has requested a size recertification, the following entities may file a size protest:

(i) Any offeror that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates, the SBA program manager relating to the order at issue (*i.e.,* the Director of Government Contracting, the Associate Administrator for Business Development, or the Director of

HUBZone, as appropriate), or the Associate General Counsel for Procurement Law.

(11) In connection with a size recertification relating to a contract required by § 125.12 of this chapter, the following entities may file a size protest challenging the recertification:

(a) Any contract holder on that multiple award contract;

(b) The contracting officer; or

(c) The SBA program manager relating to the contract at issue (*i.e.,* the Director of Government Contracting, the Associate Administrator for Business Development, or the Director of HUBZone, as appropriate), or the Associate General Counsel for Procurement Law.

(12) In connection with a size recertification relating to a multiple award contract required by § 125.12 of this chapter, any contract holder on that multiple award contract may also request a formal size determination concerning a recertifying concern's status as a small business.

(i) A request for a formal size determination made by another contract holder on a multiple award contract must be sufficiently specific to provide reasonable notice as to the grounds upon which the recertifying concern's size is questioned. Some basis for the belief or allegation that the recertifying concern does not continue to qualify as small must be given.

(ii) SBA will dismiss as not sufficiently specific any request for a formal size determination alleging merely that the recertifying concern is not small or is affiliated with unnamed other concerns.

(b) * * *

(2) * * *

(iii) Where SBA initially verified the eligibility of an 8(a) Participant for the award of an 8(a) contract but subsequently receives specific information that the Participant may be other than small and consequently ineligible for the award, the Associate Administrator for Business Development or the Associate General Counsel for Procurement Law may request a formal size determination at any point prior to award.

* * * * *

■ 7. Amend § 121.1010 by revising paragraph (b) to read as follows:

§ 121.1010 How does a concern become recertified as a small business?

* * * * *

(b) Recertification will not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation limited to a particular Government procurement or property sale, such as an ostensible subcontracting relationship or non-compliance with the nonmanufacturer rule.

* * * * *

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 8. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644, 42 U.S.C. 9815; and Pub. L. 99–661, 100 Stat. 3816; Sec. 1207, Pub. L. 100–656, 102 Stat. 3853; Pub. L. 101–37, 103 Stat. 70; Pub. L. 101–574, 104 Stat. 2814; Sec. 8021, Pub. L. 108–87, 117 Stat. 1054; and Sec. 330, Pub. L. 116–260.

■ 9. Amend § 124.3 by revising the definition of ''Community Development Corporation or CDC'' to read as follows:

§ 124.3 What definitions are important in the 8(a) BD program?

* * * * *

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805, *et seq.* or has received a letter from the Department of Health and Human Services affirming that it has received assistance under a successor program to that authorized by 42 U.S.C. 9805.

* * * * *

§ 124.4 [Removed]

■ 10. Remove § 124.4.

■ 11. Amend § 124.102 by adding the following sentences to the end of paragraph (a)(1) to read as follows:

§ 124.102 What size business is eligible to participate in the 8(a) BD program?

(a) * * *

(1) * * * In determining whether a concern applying to be certified for the 8(a) BD program qualifies as a small business concern under the size standard corresponding to its primary industry classification, SBA will accept the concern's size representation in the System for Award Management (SAM), or successor system, unless there is evidence indicating that the concern is other than small. SBA will request a formal size determination pursuant to § 121.1001(b)(8) of this chapter where any information it possesses calls into question the concern's SAM size representation.

* * * * *

■ 12. Amend § 124.105 by:

■ a. Revising paragraph (b);

■ b. Revising paragraph (f)(1);

■ c. Removing the words ''10 percent'' wherever they appear in paragraph (h)(1) and adding in their place the words ''20 percent'';

■ d. Removing the words ''20 percent'' in paragraph (h)(1) and adding in their place the words ''30 percent''; and

■ e. Revising paragraphs (h)(2), (i)(2), and (k).

The revisions read as follows:

§ 124.105 What does it mean to be unconditionally owned by one or more disadvantaged individuals?

* * * * *

(b) *Ownership of a partnership.* In the case of a concern which is a partnership, one or more individuals determined by SBA to be socially and economically disadvantaged must serve as general partners, with control over all partnership decisions. At least 51 percent of every class of partnership interest must be unconditionally owned by one or more individuals determined by SBA to be socially and economically disadvantaged. The ownership must be reflected in the concern's partnership agreement.

* * * * *

(f) * * *

(1) At least 51 percent of any distribution of profits paid to the owners of a corporation, partnership, or limited liability company concern, and a disadvantaged individual's ability to share in the profits of the concern must be commensurate with the extent of his or her ownership interest in that concern;

* * * * *

(h) * * *

(2) A non-Participant business concern in the same or similar line of business or a principal of such concern may generally not own more than a 20 percent interest in an 8(a) Participant that is in the developmental stage or more than a 30 percent interest in an 8(a) Participant in the transitional stage of the program, except that a business concern approved by SBA to be a mentor pursuant to § 125.9 of this chapter may own up to 40 percent of its 8(a) Participant protégé as set forth in § 125.9(d)(2), whether or not that concern is in the same or similar line of business as the Participant.

(i) * * *

(2) (i) Prior approval by the AA/BD is not needed where:

(A) All non-disadvantaged individual (or entity) owners involved in the change of ownership own no more than a 30 percent interest in the concern both before and after the transaction;

(B) The transfer results from the death or incapacity due to a serious, long-term

illness or injury of a disadvantaged principal;

(C) The disadvantaged individual or entity in control of the Participant will increase the percentage of its ownership interest by any percentage; or

(D) The Participant has never received an 8(a) contract and the individual(s) or entity upon whom initial eligibility was based continues to own more than 50% of the Participant.

(ii) In determining whether a non-disadvantaged individual involved in a change of ownership has more than a 30 percent interest in the concern, SBA will aggregate the interests of all immediate family members as set forth in § 124.3, as well as any individuals who are affiliated based on an identity of interest under § 121.103(f).

(iii) Where prior approval is not required, the concern must notify SBA within 60 days of such a change in ownership, or before it submits an offer for an 8(a) contract, whichever occurs first.

Example 1 to paragraph (i)(2). Disadvantaged individual A owns 90% of 8(a) Participant X; non-disadvantaged individual B owns 10% of X. In order to raise additional capital, X seeks to change its ownership structure such that A would own 75%, B would own 10% and C would own 15%. X can accomplish this change in ownership without prior SBA approval. Non-disadvantaged owner B is not involved in the transaction and non-disadvantaged individual C owns less than 30% of X both before and after the transaction.

Example 2 to paragraph (i)(2). Disadvantaged individual C owns 60% of 8(a) Participant Y; non-disadvantaged individual D owns 35% of Y; and non-disadvantaged individual E owns 5% of Y. C seeks to transfer 5% of Y to E. Prior SBA approval is not needed. Although non-disadvantaged individual D owns more than 30% of Y, D is not involved in the transfer. Because the only non-disadvantaged individual involved in the transfer, E, owns less than 30% of Y both before and after the transaction, prior approval is not needed.

Example 3 to paragraph (i)(2). Disadvantaged individual A owns 80% of 8(a) Participant X; non-disadvantaged individual B owns 20% of X. A seeks to transfer 15% of X to B. SBA approval is needed. Although B, the non-disadvantaged owner of X, owns less than 30% of X prior to the transaction, prior approval is needed because B would own more than 30% after the transaction.

Example 4 to paragraph (i)(2). ANC A owns 55% of 8(a) Participant X; non-disadvantaged individual B owns 45% of X. B seeks to transfer 10% to A. Prior SBA approval is not needed. Although a non-disadvantaged individual who is involved in the transaction, B, owns more than 30% of X both before and after the transaction, SBA approval is not needed because the change only increases the percentage of A's ownership interest in X.

Example 5 to paragraph (i)(2). Disadvantaged individual C owns 65% of 8(a) Participant Z and non-disadvantaged individual D owns 35% of Z. Z has been in the 8(a) BD program for 2 years but has not yet been awarded an 8(a) contract. C seeks to transfer 10% to D. Although a non-disadvantaged individual who is involved in the transaction, D, owns more than 30% of Z both before and after the transaction, prior SBA approval is not needed because Z has never received an 8(a) contract.

* * * * *

(k) *Right of first refusal.* A right of first refusal granting a non-disadvantaged individual or other entity the contractual right to purchase the ownership interests of a qualifying disadvantaged individual does not affect the unconditional nature of ownership, if the terms follow normal commercial practices. If those rights are exercised by a non-disadvantaged individual or other entity after certification, the Participant must notify SBA. If the exercise of those rights results in disadvantaged individuals owning less than 51% of the concern, SBA will initiate termination pursuant to §§ 124.303 and 124.304.

■ 13. Amend § 124.106 by:

■ a. Removing paragraph (d)(3);

■ b. Redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(3) and (d)(4), respectively;

■ c. Revising paragraph (e)(3);

■ d. Removing the text ''director, or key employee'' in paragraph (f) and adding in its place the text ''or director'';

■ e. Redesignating paragraph (h) as paragraph (i); and

■ f. Adding new paragraph (h).

The revision and addition to read as follows:

§ 124.106 When do disadvantaged individuals control an applicant or Participant?

* * * * *

(e) * * *

(3) Receive compensation from the applicant or Participant in any form as a director, officer or employee, that exceeds the compensation to be received by the highest ranking officer (usually CEO or President), unless the concern demonstrates that the compensation to be received by the non-disadvantaged individual is commercially reasonable or that the highest-ranking officer has elected to take lower compensation to benefit the applicant or Participant. A Participant must notify SBA within 30 calendar days if the compensation paid to the highest-ranking officer of the Participant falls below that paid to a non-disadvantaged individual. In such a case, SBA must determine that that the compensation to be received by the non-disadvantaged individual is commercially reasonable or that the highest-ranking officer has elected to take lower compensation to benefit the Participant before SBA may determine that the Participant is eligible for an 8(a) award.

* * * * *

(h) *Exception for extraordinary circumstances.* SBA will not find that a lack of control exists where a socially and economically disadvantaged individual does not have the unilateral power and authority to make decisions regarding the following extraordinary circumstances:

(1) Adding a new equity stakeholder or increasing the investment amount of an equity stakeholder;

(2) Dissolution of the company;

(3) Sale of the company or all assets of the company;

(4) The merger of the company;

(5) The company declaring bankruptcy;

(6) Amendment of the company's corporate governance documents to remove the shareholder's authority to block any of paragraphs (h)(1) through (5) of this section;

(7) Any other extraordinary action that is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

* * * * *

■ 14. Amend § 124.107 by:

■ a. Revising the first sentence of the introductory text;

■ b. Revising paragraph (a);

■ c. Removing paragraph (e); and

■ d. Redesignating paragraph (f) as paragraph (e).

The revisions read as follows:

§ 124.107 What is potential for success?

SBA must determine that with contract, financial, technical, and management support from the 8(a) BD program, from contractors or from others assisting with business operations, the applicant concern is able to perform 8(a) contracts and possess reasonable prospects for success in competing in the private sector. * * *

(a) Income tax returns for each of the two previous tax years must show operating revenues.

* * * * *

■ 15. Amend § 124.108 by:
■ a. Removing paragraph (a)(1);
■ b. Redesignating paragraphs (a)(2), (3), (4) and (5) as paragraphs (a)(1), (2), (3), and (4), respectively; and
■ c. Revising newly redesignated paragraph (a)(3) and paragraph (e).

The revision to read as follows:

§ 124.108 What other eligibility requirements apply for individuals or businesses?

* * * * *

(a) * * *

(3) An applicant is ineligible for admission to the 8(a) BD program if the applicant concern or a proprietor, partner, limited liability member, director, officer, or holder of at least 20 percent of its stock, or another person (including key employees) with significant authority over the concern lacks business integrity as demonstrated by conduct that could be grounds for suspension or debarment;

* * * * *

(e) *Federal financial obligations.* A business concern is ineligible for admission to or participation in the 8(a) BD program if either the concern or any of its principals has failed to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing. However, a small business concern may be eligible if the concern or the affected principals can demonstrate that they are current on an approved repayment plan or the financial obligations owed have been settled and discharged/forgiven by the Federal Government.

■ 16. Amend § 124.203 by removing the last three sentences and adding a sentence in their place to read as follows:

§ 124.203 What must a concern submit to apply to the 8(a) BD program?

* * * The majority socially and economically disadvantaged owner must take responsibility for the accuracy of all information submitted on behalf of the applicant.

■ 17. Amend § 124.204 by revising paragraph (d) to read as follows:

§ 124.204 How does SBA process applications for 8(a) BD program admission?

* * * * *

(d) An applicant must be eligible as of the date SBA issues a decision. An applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, and any changed circumstances.

* * * * *

■ 18. Revise § 124.207 to read as follows:

§ 124.207 Can an applicant reapply for admission to the 8(a) BD program?

A concern which has been declined for 8(a) BD program participation may submit a new application for admission to the program at any time after 90 calendar days from the date of the Agency's final decision to decline.

■ 19. Amend § 124.303 by adding paragraph (c) to read as follows:

§ 124.303 What is termination?

* * * * *

(c)(1) A firm that is terminated from the 8(a) BD Program due to the submission of false or misleading information may be removed from SBA's other small business contracting programs, including the HUBZone Program, the Women-Owned Small Business (WOSB) Program, the Veteran Small Business Certification (VetCert) Program, and SBA's Mentor-Protégé Program. In addition, SBA will refer the matter to the SBA Office of Inspector General for review and may recommend that Government-wide debarment or suspension proceedings be initiated.

(2) A firm that is decertified from the HUBZone Program, the WOSB Program, or the VetCert Program due to the submission of false or misleading information may be terminated from the 8(a) BD Program.

(3) SBA may require a firm that is decertified from the HUBZone Program, the WOSB Program, or the VetCert Program due to the submission of false or misleading information to enter into an administrative agreement with SBA as a condition of admission to the 8(a) BD program.

■ 20. Amend § 124.503 by revising paragraph (g)(1)(iii) to read as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

* * * * *

(g) * * *

(1) * * *

(iii) For open requirements, the effect that contract would have on the equitable distribution of 8(a) contracts; and

* * * * *

■ 21. Amend § 124.504 by revising paragraph (a) to read as follows:

§ 124.504 What circumstances limit SBA's ability to accept a procurement for award as an 8(a) contract, and when can a requirement be released from the 8(a) BD program?

* * * * *

(a) *Prior intent to award as a small business set-aside, or use the HUBZone, VetCert, or Women-Owned Small Business programs.* A procuring activity, for itself or for another end user, issued a solicitation for or otherwise expressed publicly a clear intent to award the contract as a small business set-aside, or to use the HUBZone, VetCert, or Women-Owned Small Business programs prior to offering the requirement to SBA for award as an 8(a) contract.

(1) However, SBA may accept the requirement into the 8(a) BD program where the AA/BD determines that there is a reasonable basis to cancel the initial solicitation or, if a solicitation had not yet been issued, a reasonable basis for the procuring agency to change its initial clear expression of intent to procure outside the 8(a) BD program (*e.g.,* the procuring agency's needs have changed since the initial solicitation was issued such that the solicitation no longer represents its current needs; or appropriations that were no longer available for the requirement as anticipated in one fiscal year are available in the succeeding fiscal year).

(i) A change in strategy only (*i.e.,* an agency seeking to solicit through the 8(a) BD program instead of through another previously identified program) will not constitute a reasonable basis for SBA to accept the requirement into the 8(a) BD program.

(ii) The AA/BD may coordinate with the D/GC, where appropriate, before accepting a requirement into the 8(a) BD program to ensure that another SBA program is not adversely affected.

(2) The AA/BD may also permit the acceptance of the requirement under extraordinary circumstances.

* * * * *

■ 22. Amend § 124.509 by redesignating paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and adding new paragraph (d)(1)(ii) to read as follows:

§ 124.509 What are non-8(a) business activity targets?

* * * * *

(d) * * *

(1) * * *

(ii) In determining the projected revenue SBA should consider in determining whether one or more unsuccessful offers submitted by the Participant would have given the Participant sufficient revenues to achieve the applicable non-8(a) business

activity target under paragraph (d)(1)(i)(A) of this section, SBA will consider only the base year of the procurement at issue and not the projected full value of the procurement. SBA will not consider projected revenue under a particular non-8(a) contract where SBA determines the Participant submitted its offer without possessing reasonable prospects of success. In making this determination, SBA will consider all relevant factors, including, but not limited to:

(A) The magnitude of the contract relative to that of the Participant's previous contracts: and

(B) The past performance and experience of a joint venture partner and/or a subcontractor.

Example 1 to paragraph (d)(1)(ii): Participant X is in year 2 of the transitional stage (or year 6 of the 8(a) BD program). It has never received a contract in excess of $5M. X received $20M in total revenue and $3M in non-8(a) revenue during program year 6. X failed to meet its applicable non-8(a) business activity target (BAT) of 25% ($20M × 0.25 = $5M). To demonstrate its good efforts to achieve non-8(a) revenue, X submits evidence that it submitted two offers without any identified subcontractors: one for a five-year contract valued at $100M and one for a five-year contract valued at $5M. SBA would not consider the first offer to qualify as a ''good faith effort'' and would determine that the offer had no reasonable prospect for success since the magnitude of that contract far exceeded anything it had performed previously (submitting an offer for a $100M contract where the firm had never performed a contract in excess of $5M) and X did not identify any subcontractor or joint venture partner with relevant past performance and experience. The second offer would count as a good faith effort since its overall value was in line with previous contracts X had performed. However, because SBA considers only the projected revenue for the base year of the contract (or $1M), considering this offer does not bring X into compliance with its BAT ($3M + $1M = $4M, which is less than the $5M required to be in compliance).

* * * * *

■ 23. Amend § 124.514 by revising paragraph (a)(1) to read as follows:

§ 124.514 Exercise of 8(a) options and modifications.

(a) * * *

(1) If a firm's term of participation in the 8(a) BD program has ended (or the firm has otherwise exited the program) or is no longer small under the size standard corresponding to the NAICS code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised.

* * * * *

■ 24. Amend § 124.518 by revising the section heading and paragraph (c), and adding paragraph (d) to read as follows:

§ 124.518 How can an 8(a) contract be terminated or novated before performance is completed?

* * * * *

(c) *Substitution of one 8(a) contractor for another.* SBA may authorize another Participant to complete performance and, in conjunction with the procuring activity, permit novation of an 8(a) contract where a procuring activity contracting officer demonstrates to SBA that the Participant that was awarded the 8(a) contract is unable to complete performance, where an 8(a) contract will otherwise be terminated for default, or where SBA determines that substitution would serve the business development needs of both 8(a) Participants. In determining whether a substitution would serve the business development needs of both 8(a) Participants, SBA will consider whether the substitution would allow a Participant to circumvent program policies or impede the interests of the program.

Example 1 to paragraph (c): Participant A anticipates it will not meet its applicable business activity target (BAT). Participant A seeks to transfer an 8(a) contract to another eligible 8(a) Participant through the substitution process and then perform a significant portion of that contract as a subcontractor to the new 8(a) Participant because the revenue from the subcontract will accrue to Participant A as non-8(a) revenue. SBA would not approve such a substitution because doing so would allow Participant X to circumvent the BAT requirement.

Example 2 to paragraph (c): Participant B is performing the last option period of performance under an 8(a) contract it won through competition. Participant B has graduated from the 8(a) Business Development (BD) program and will therefore not be eligible to receive the contract for the follow-on requirement. Participant B seeks to transfer its contract to Participant C, a sister company owned by the same Tribe/Alaska Native Corporation/Native Hawaiian Organization/Community Development Corporation, to allow Participant C to be the incumbent contractor when the procuring agency seeks to procure the follow-on procurement as an 8(a) sole source contract. SBA regulations governing entity participation in the 8(a) BD program prohibit a Participant from receiving an 8(a) sole source contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by a sister company. Participant C would therefore not be eligible to receive the sole source follow-on contract to Participant B's 8(a) contract if contract performance ended under Participant B. SBA would not approve such a substitution because doing so would impede these policies.

Example 3 to paragraph (c): Participant D competed for and won a spot on a multiple award, Indefinite Quantity, Indefinite Delivery 8(a) contract. Participant D has exceeded the size standard under the NAICS code assigned to the contract and is therefore no longer eligible to receive sole source task orders issued under the contract; Participant D may, however, continue to receive competitive orders. Participant D seeks to transfer the contract to another eligible 8(a) Participant through the substitution process. SBA would not approve such a substitution because doing so would not serve its business development needs.

(d) *Novation to the lead partner to an 8(a) joint venture.* A joint venture that was awarded an 8(a) contract may seek to novate the 8(a) contract to the lead 8(a) Participant to the joint venture, provided each member of the joint venture agrees to such novation and the non-lead 8(a) joint venture partner will transfer all assets needed to perform the contract to the lead 8(a) Participant. In order for SBA to authorize novation, SBA must determine that the 8(a) Participant seeking to be novated the contract continues to meet all 8(a) eligibility requirements as if for a new 8(a) contract at the time of novation and the procuring agency must determine that the 8(a) firm is capable and responsible to perform the contract.

§ 124.602 [Amended]

■ 25. Amend § 124.602 by:

■ a. Removing the word ''$10,000,000'' in paragraphs (a)(1) and (a)(2) and adding in its place the word ''$20,000,000'';

■ b. Removing the words ''$2,000,000 and $10,000,000'' in paragraph (b)(1) and adding in their place the words ''7,500,000 and $20,000,000''; and

■ c. Removing the word ''$2,000,000'' in paragraph (c) and adding in its place the word ''$7,500,000''.

§ 124.603 [Amended]

■ 26. Amend § 124.603 by removing the word ''Former'' and adding in its place

the words ''If requested by the SBA, former''.

■ 27. Revise § 124.604 to read as follows:

§ 124.604 Report of benefits for firms owned by Tribes, ANCs, NHOs and CDCs.

(a) As part of its annual financial statement submission (*see* § 124.602), each Participant owned by a Tribe, ANC, NHO or CDC must submit to SBA information showing how the Tribe, ANC, NHO or CDC has provided benefits to the Tribal or native members and/or the Tribal, native or other community due to the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program through one or more firms. This data includes information relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services provided by the Tribe, ANC, NHO or CDC to the affected community.

(b) A participating Tribe, ANC, NHO, or CDC may submit a consolidated report prepared by the parent entity showing how the Tribe, ANC, NHO, or CDC has provided benefits to the Tribal or native members and/or the Tribal, native or other community due to the Tribe's/ANC's/NHO's/CDC's participation in the 8(a) BD program through one or more firms. Where a Tribe/ANC/NHO/CDC elects to report consolidated community benefits, its individual 8(a) Participants need not submit separate reports as prescribed under paragraph (a) of this section.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 28. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657f, 657q, 657r, and 657s; 38 U.S.C. 501 and 8127.

■ 29. Amend § 125.1 by adding, in alphabetical order, the definitions of ''Agreement'', ''Disqualifying recertification'', ''Qualifying recertification'', and ''Set Aside or Reserved Award'' to read as follows:

§ 125.1 What definitions are important to SBA's Government Contracting Programs?

Agreement means a Blanket Purchase Agreement, Basic Agreement, or a Basic Ordering Agreement.

* * * * *

Disqualifying recertification means a recertification as either other than small or other than a qualified small business program participant that is required for eligibility to participate in a Set Aside or Reserved Award.

* * * * *

Qualifying recertification means a recertification as small or as a qualified small business program participant that is required for eligibility to participate in a Set Aside or Reserved Award.

* * * * *

Set Aside or Reserved Award means a contract, including multiple award contracts, agreements, or orders against contracts or agreements, that are set aside, partially set aside, or reserved for small business or any socio-economic small business program participants.

* * * * *

■ 30. Amend § 125.2 by:

■ a. Redesignating paragraph (c)(6) as paragraph (c)(7);

■ b. Adding new paragraph (c)(6);

■ c. Redesignating paragraph (e)(7) as paragraph (e)(8); and

■ d. Adding new paragraph (e)(7).

The additions read as follows:

§ 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?

* * * * *

(c) * * *

(6) *Prohibition on competitions requiring or favoring additional socioeconomic certifications.* A procuring activity cannot create a small business set-aside or reserve (for either a contract, order or agreement) that requires multiple socioeconomic certifications in addition to a size certification (*e.g.,* a competition cannot be limited only to small business concerns that are also 8(a) and HUBZone certified) or give evaluation preferences to concerns having multiple socioeconomic certifications.

* * * * *

(e) * * *

(7) *Partial set-aside and reserve.* A procuring activity may have both a partial small business set-aside and a small business reserve on the same contract. A partial set-aside can be done for one or more CLINs that must be set-aside for small business and a reserve could also be done on the same procurement for other items or services where a contracting officer would have discretion to utilize the small business reserve where appropriate.

* * * * *

■ 31. Amend § 125.3 by:

■ a. Adding paragraphs (a)(4) and (b)(4);

■ b. Removing from paragraph (d)(1) the text ''30 days'' and ''October 30th'' and adding in their place ''45 days'' and ''November 14th'', respectively; and

■ c. Removing from paragraph (d)(2) the text ''60 days'' and ''November 30th'' and adding in their place ''75 days'' and ''December 14th'', respectively.

The additions read as follows:

§ 125.3 What types of subcontracting assistance are available to small businesses?

(a) * * *

(4) For subcontracting purposes, a concern must qualify as a small business concern and a socioeconomic small business concern as of the date that it certifies that it is small or that it qualifies as a socioeconomic small business concern for the subcontract.

(b) * * *

(4) Except for HUBZone and SDVO small business subcontractors, a prime contractor may rely on the socioeconomic self-certification of a subcontractor provided the prime contractor does not have a reason to doubt the subcontractor's self-certification.

* * * * *

■ 32. Amend § 125.6 by revising the second sentence and adding a new third sentence in paragraph (d) introductory text and adding two sentences to the end of paragraph (d)(3) to read as follows:

§ 125.6 What are the prime contractor's limitations on subcontracting?

* * * * *

(d) * * * However, for a multi-agency set aside contract where more than one agency can issue orders under the contract, the ordering agency must use the period of performance for each order to determine compliance and monitor compliance with the limitations on subcontracting for that specific order. At the end of performance of the order, the ordering contracting officer should then inform the contracting officer for the underlying multi-agency contract if the ordering contracting officer knows that the contractor has failed to meet the applicable limitations on subcontracting requirement. * * *

* * * * *

(3) * * * Except with respect to staffing contracts, work performed by an employee obtained from a temporary employee agency, professional employer organization, or leasing concern shall be treated as the recipient concern's self-performance. The work performed by employees leased to the small business prime contractor will therefore not count against the applicable limitation on subcontracting.

* * * * *

■ 33. Amend § 125.8 by revising paragraphs (e) and (f) to read as follows:

§ 125.8 What requirements must a joint venture satisfy to submit an offer for a procurement or sale set aside or reserved for small business?

* * * * *

(e) *Capabilities, past performance and experience.* When evaluating the capabilities, past performance, experience, business systems and certifications of an entity submitting an offer for a contract set aside or reserved for small business as a joint venture established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

(1) A procuring activity has discretion whether to require a protégé or lead small business member of a joint venture to demonstrate some level of past performance and/or experience. It may rely solely on the past performance and experience of the mentor or non-similarly situated joint venture partner, or it may require some level of past performance and/or experience of the protégé or lead small business member. Where it requires some level of past performance and/or experience of the protégé or lead small business firm, the procuring activity shall not require that firm to individually meet all the same evaluation or responsibility criteria as that required of other offerors generally.

(2) If a procuring activity requires a protégé or lead small business joint venture partner to demonstrate some successful performance and/or experience on fewer previous contracts of lower values than that required of other offerors generally, successful performance by the protégé or lead small business firm on the contracts it identifies shall be rated equivalently to successful performance by the mentor or non-similarly situated partner to the joint venture or any other individual offeror on the higher valued contracts they identify.

(3) The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems and certifications necessary to perform the contract.

Example 1 to paragraph (e). A solicitation requires offerors to demonstrate successful performance on five similar contracts valued at $20 million or more. Because a protégé joint venture partner must perform at least 40% of the work to be done by a successful joint venture offeror, the procuring activity seeks to require a protégé joint venture partner to demonstrate some past performance. The procuring activity may require a protégé joint venture partner to demonstrate one or two contracts valued at $10 million or $8 million, but may not require the protégé to demonstrate successful performance on five similar contracts and may not require the protégé to demonstrate successful performance on contracts valued at $20 million. In addition, if a procuring activity requires a protégé joint venture partner to demonstrate successful performance on two contracts valued at $10 million or more, successful performance by the protégé firm on those $10 million contracts shall be rated equivalently to successful performance by the mentor partner to the joint venture or any other individual offeror on $20 million contracts.

(f) *Contract execution.* The procuring activity will execute a contract set aside or reserved for small business in the name of the joint venture entity when there is a separate legal entity joint venture or the name of a small business partner to the joint venture when there is an informal joint venture, but in either case will identify the award as one to a small business joint venture or a small business mentor-protégé joint venture, as appropriate.

* * * * *

■ 34. Amend § 125.9 by:
■ a. Revising paragraph (b) introductory text;
■ b. Revising paragraph (b)(2);
■ c. Adding the word ''a'' after the words ''more than one protégé at'' and before the word ''time'' in paragraph (b)(3) introductory text;
■ d. Adding paragraph (b)(4);
■ e. Revising paragraph (c)(2);
■ f. Redesignating paragraph (e)(6) as paragraph (c)(4);
■ g. Revising newly redesignated paragraphs (c)(4)(iii) and (iv);
■ h. Adding paragraph (c)(5);
■ i. Adding paragraph (d)(1)(iv); and
■ j. Redesignating paragraphs (e)(7), (8) and (9) as paragraphs (e)(6), (7) and (8), respectively.

The revisions and additions read as follows:

§ 125.9 What are the rules governing SBA's small business mentor-protégé program?

* * * * *

(b) *Mentors.* Any for-profit business concern that demonstrates a commitment and the ability to assist small business concerns may act as a mentor and receive benefits as set forth in this section. This includes other than small businesses.

* * * * *

(2) (i) SBA will decline an application if SBA determines that the mentor does not possess good character or a favorable financial position, employs or otherwise controls the managers or key employees of the protégé, or is otherwise affiliated with the protégé.

(ii) SBA may terminate the mentor-protégé agreement if:

(A) SBA determines that the mentor does not possess good character or a favorable financial position;

(B) SBA determines that the mentor was affiliated with the protégé at the time of application or becomes affiliated with the protégé for reasons other than the mentor-protégé agreement or assistance provided under the agreement; or

(C) Key managers or personnel become employees of both the mentor and protégé firms at the same time.

* * * * *

(4) A mentor cannot be a contract holder through joint ventures with two protégé small business concerns on the same small business multiple award contract or small business reserve on a multiple award contract at the same time.

(i) Where a mentor purchases another business entity that is also an SBA-approved mentor that is a contract holder as a joint venture with a protégé small business and the mentor is also a contract holder with a protégé small business on that same multiple award contract, the mentor must exit one of those joint venture relationships.

(ii) The protégé firm connected to the joint venture from which the mentor exits may seek to:

(A) Acquire the new mentor's interest in the small business multiple award contract or reserve and, where necessary and appropriate, novate such contract or reserve to itself only pursuant to FAR 42.1204; or

(B) Replace the new mentor with another business in the joint venture such that the revised joint venture will continue to qualify as small and be eligible for orders issued under the multiple award contract.

(C) SBA will not find affiliation where a protégé obtains financing under normal commercial terms in order to purchase the mentor's interest in a multiple award contract.

* * * * *

(c) * * *

(2) A protégé firm may generally have only one mentor at a time.

(i) SBA may approve a second mentor for a particular protégé firm where the second relationship will not compete or otherwise conflict with the first mentor-protégé relationship, and:

(A) The second relationship pertains to an unrelated NAICS code; or

(B) The protégé firm is seeking to acquire a specific expertise that the first mentor does not possess.

(ii) Where SBA has approved two mentor-protégé relationships for the same protégé small business, the protégé may enter joint venture relationships with each of its two mentors. However, those joint ventures cannot compete against each other and cannot be contract holders on the same multiple award contract.

* * * * *

(4) * * *

(iii) If during the evaluation of the mentor-protégé relationship pursuant to paragraphs (g) and (h) of this section SBA determines that a mentor has not provided the business development assistance set forth in its mentor-protégé agreement or that the quality of the assistance provided was not satisfactory, SBA may terminate the mentor-protégé relationship. Where SBA or the parties themselves terminate a mentor-protégé relationship, SBA may allow the protégé to substitute another mentor for the time remaining in the mentor-protégé agreement without counting against the two-mentor limit.

Example to paragraph (c)(4)(iii). 8(a) Participant X enters an SBA approved mentor-protégé relationship with A. After 3 years, X and A decide to terminate the mentor-protégé relationship. After 8 months of searching for a new mentor, X and B submit a mentor-protégé agreement to SBA for review. Once SBA determines that the mentor-protégé agreement meets all of SBA's requirements, SBA will approve the X–B relationship for a period of 3 years from the date of SBA's approval. The time searching for a new mentor and SBA's review time are not subtracted from the time authorized for the substituted mentor-protégé relationship.

(iv) Instead of having a six-year mentor-protégé relationship with two separate mentors, a protégé may seek to extend or renew a mentor-protégé relationship with the same mentor for a second six-year term. In order for SBA to approve an extension or renewal of a mentor-protégé relationship with the same mentor, the mentor must commit to providing additional business development assistance to the protégé. Whether a protégé has a mentor-protégé relationship with two different mentors or the same mentor for a second six-year period, a concern cannot be a protégé for a total of more than 12 years.

(5) Where a business concern purchases another business concern that is currently the mentor of a protégé firm, that business concern shall become the new mentor of the protégé if it commits to honoring the obligations under the seller's mentor-protégé agreement or the purchasing business concern and the protégé negotiate a new mentor-protégé agreement that SBA approves. Where that occurs, that new mentor-protégé relationship will be effective for no longer than six years minus the length of the mentor-protégé relationship with the seller mentor.

(i) The protégé firm can terminate its mentor-protégé relationship only if the purchasing business concern and the protégé firm cannot agree on either continuing with the previous mentor-protégé agreement or negotiating a new mentor-protégé agreement that is acceptable to SBA.

(ii) Where a mentor-protégé relationship is terminated, the protégé firm may seek another business concern to enter a mentor-protégé relationship for a duration not to exceed six years minus the length of the mentor-protégé relationship with the former mentor.

Example 1 to paragraph (c)(5). 8(a) Participant A enters a mentor-protégé relationship with business concern X. After 3 years, business concern Y purchases X. A and Y agree to continue to abide by the mentor-protégé agreement between A and X. The mentor-protégé relationship between A and Y can last no longer than 3 years (6 years minus the length of the A and X mentor-protégé relationship). At the end of that agreement A and Y could seek to renew the mentor-protégé relationship for another 6 years if this is A's first mentor-protégé relationship.

Example 2 to paragraph (c)(5). 8(a) Participant Z enters a mentor-protégé relationship with business concern B. After 3 years, business concern C purchases B. If either C is unwilling to abide by the terms of the Z–B mentor-protégé agreement or Z does not want to extend a mentor protégé relationship with C and the mentor-protégé agreement is terminated, Z may seek a new business concern to enter a mentor-protégé relationship. If business concern D agrees to enter into a mentor-protégé relationship with Z and SBA approves that relationship, the Z–D mentor-protégé relationship can last for no longer than 3 years (6 years minus the length of the Z/B mentor-protégé relationship). If that was Z's first mentor-protégé relationship, Z may seek to extend the Z–D mentor-protégé relationship for an additional 6 years or may seek a new mentor-protégé relationship with another firm for up to 6 years. In no case can a protégé firm have mentor-protégé relationships lasting more than 12 years.

(d) * * *

(1) * * *

(iv) Where a mentor seeks to sell its interest in a mentor-protégé joint venture, the protégé firm shall have a right of first refusal to purchase that interest. SBA will not find affiliation where a protégé obtains financing under normal commercial terms in order to purchase the mentor's interest in a mentor-protégé joint venture.

* * * * *

■ 35. Add § 125.12 to read as follows:

§ 125.12 Recertification of Size and Small Business Program Status.

(a) *General.* Recertification of size and small business program status (*i.e.,* 8(a), HUBZone, WOSB/EDWOSB, or SDVOSB) is required within 30 calendar days of a merger, acquisition, or sale of or by a concern or an affiliate of the concern, which results in a change in controlling interest.

(1) A concern and the acquiring concern must recertify if each has received an award as a small business or small business program participant.

(2) In the context of a joint venture, recertification is required from any partner to the joint venture that has merged or is party to the sale or acquisition.

(3) Recertification does not change the terms and conditions of the award. The limitations on subcontracting, non-manufacturer and subcontracting plan requirements in effect at the time of award remain in effect throughout the life of the award regardless of whether a recertification is qualifying or disqualifying. However, a contracting officer may require a subcontracting plan if a prime contractor's size status changes from small to other than small as a result of a size recertification.

(4) A size re-certification shall relate to the size standard in effect at the time of re-certification that corresponds to the NAICS code that was initially assigned to the award.

(b) *Long term contracts.* For contracts (including multiple award contracts) and orders with durations of more than five years (including options), a concern must recertify its size and status no more than 120 days prior to the end of the fifth year of the award, and no more than 120 days prior to exercising any option thereafter. A contracting officer may also request size and/or status recertification, as he or she deems appropriate, prior to the 120-day point in the fifth year of a long-term contract or order. The agency and the contractor must immediately revise all applicable Federal contract databases to reflect the new size status.

(c) *Request by contracting officer.* Recertification of size and small

business program status is required where the contracting officer explicitly requires concerns to recertify their size or status in response to a solicitation for a set aside or reserved order or agreement.

(d) *Change in structure of entity-owned concern.* Size or status recertification is not required when the ownership of a concern that is at least 51% owned by an Indian Tribe, Alaska Native Corporation, or Community Development Corporation changes to or from a wholly-owned business concern of the same entity, as long as the ultimate owner remains that entity.

Example 1 to paragraph (d). Indian Tribe X owns 100% of small business ABC. ABC wins an award for a small business set-aside contract. In year two of contract performance, X changes the ownership of ABC so that X owns 100% of a holding company XYZ, Inc., which in turn owns 100% of ABC. This restructuring does not require ABC to recertify its status as a small business because it continues to be 100% owned (indirectly rather than directly) by Indian Tribe X.

(e) *Effect of Recertification*—(1) *Qualifying Recertification.* A concern that has a qualifying recertification is generally considered to be a small business or small business program participant for up to five years from the date of the recertification and remains eligible for set-aside or reserved awards unless there is a subsequent disqualifying recertification.

(2) *Disqualifying Recertification*—(i) *Pending Set Aside or Reserved Award.* If events triggering a disqualifying recertification under paragraph (a) of this section occur within 180 days after the date of an offer but prior to award, the concern is ineligible to receive the pending small business set aside or reserved award. The concern must notify the contracting officer of the change in its size or status. If events triggering a disqualifying recertification under paragraph (a) of this section occur more than 180 days after the date of an offer but prior to award, the concern is eligible to receive a pending single award or reserve and the award will count as an award to a small business or small business program participant for goaling purposes for up to five years from the date of the award unless there is a disqualifying recertification. However, where the underlying award is a multiple award small business set aside or reserve the concern is ineligible for the pending award because the concern would not be eligible for orders set aside for small business or set aside for a specific type of small business. *See* paragraph (e)(2)(ii)(B) of this section.

(ii) *Future Set Aside or Reserved Award*—(A) *Request for recertification on a specific order or agreement under an underlying multiple award contract that is set aside or reserved for small business.* If a concern has a disqualifying size or status recertification in response to a contracting officer request for recertification on a specific order or agreement under an underlying multiple award contract that is set aside or reserved for small business (*i.e.,* small business set-aside or reserve, 8(a) small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned/economically disadvantaged women-owned small business), the concern is ineligible for the specific order or agreement but remains eligible for other set aside or reserved awards and unrestricted awards.

(*1*) Where an initially-small contract holder has naturally grown to be other than small and could not recertify as small for a specific order or agreement for which a contracting officer requested recertification, it may continue to qualify as small for other orders or agreements where a contracting officer does not request recertification.

(*2*) Where an initially-eligible 8(a), HUBZone, WOSB or SDVOSB contract holder on an 8(a), HUBZone, WOSB or SDVOSB set-aside or reserve cannot recertify its status for a specific order or agreement for which a contracting officer requested recertification, it may continue to qualify as eligible for other competitively awarded orders or agreements where a contracting officer does not request recertification.

(B) *Other Events Triggering Recertification.* (*1*) If a concern has a disqualifying recertification in response to a recertification requirement on a long-term multiple award contract or a recertification requirement following a merger, acquisition, or sale involving a business entity that does not itself qualify as small under the NAICS code assigned to the multiple award contract, the concern is ineligible to submit an offer for a set aside or reserved award after the triggering event occurs. The concern remains eligible for unrestricted awards under a multiple award contract and orders issued under a single award small business contract. In either case, a procuring agency cannot count the order as an award to small business or to the specific type of small business (*i.e.,* 8(a), WOSB, SDVOSB, or HUBZone).

(*2*) If a concern has a disqualifying recertification in response to a requirement to recertify size and/or status following a merger, acquisition, or sale involving another small business concern, the concern remains eligible for set-aside or reserved orders issued under a multiple award contract, but a procuring agency cannot count the order as an award to small business or to the specific type of small business (*i.e.,* 8(a), WOSB, SDVOSB, or HUBZone).

(iii) *Options.* (A) For a single award small business set-aside or reserve award or any unrestricted award, a concern that submits a disqualifying recertification remains eligible to receive options. The procuring agency cannot count the option period as an award to a small business or small business program participant for goaling purposes. Such a concern may make a qualifying recertification for a subsequent option period if it meets the applicable size standard or becomes a certified small business program participant.

(B) For a multiple award contract that is set-aside or reserved for small business, a concern that submits a disqualifying recertification in response to a recertification requirement on a long-term contract or a recertification requirement following a merger, acquisition, or sale involving a business entity that does not itself qualify as small under the NAICS code assigned to the multiple award contract is ineligible to receive options.

(C) For a multiple award contract that is set-aside or reserved for small business, a concern that submits a disqualifying recertification in response to a requirement to recertify size and/or status following a merger, acquisition, or sale involving another small business concern, the concern remains eligible to receive options. The procuring agency cannot count the option period as an award to a small business or to the specific type of small business (*i.e.,* 8(a), WOSB, SDVOSB, or HUBZone). Such a concern may make a qualifying recertification for a subsequent option period if it meets the applicable size standard or becomes a certified small business program participant.

(f) *Joint venture recertifications.* Where a joint venture must recertify its small business size status under paragraph (a) of this section, the joint venture can recertify as small where all parties to the joint venture qualify as small at the time of recertification, or the protégé small business in a still active mentor-protégé joint venture qualifies as small at the time of recertification. A joint venture can recertify as small even though the date of recertification occurs more than two years after the joint venture received its first contract award (*i.e.,* recertification

is not considered a new contract award under § 121.103(h).

(g) *Delayed effective date.* Notwithstanding paragraphs (e)(2)(ii)(B) and (e)(2)(iii)(B) of this section:

(i) A firm that has a disqualifying size or status recertification due to a merger, acquisition or sale that occurs prior to January 17, 2026 remains eligible for orders issued under an underlying small business multiple award contract. However, the agency cannot count any new or pending orders issued pursuant to the contract, from that point forward, towards its small business and socioeconomic goals. This includes set-asides, partial set-asides, and reserves for 8(a) BD Participants, certified HUBZone small business concerns, SDVO SBCs, and ED/WOSBs.

(ii) A firm that has a disqualifying size or status recertification prior to the end of the fifth year of a long-term contract remains eligible for any options to be exercised prior to January 17, 2026. However, the agency cannot count those options towards its small business and socioeconomic goals.

■ 36. Add § 125.13 to read as follows:

§ 125.13 What restrictions apply to fees for representatives of applicants and participants in SBA's 8(a) BD, HUBZone, WOSB and VetCert programs?

(a) The compensation received by any packager, agent, or representative of a concern applying for 8(a) BD, HUBZone, WOSB/EDWOSB, or VOSB/SDVOSB certification in exchange for assisting the applicant in obtaining such certification must be reasonable in light of the service(s) performed by the packager, agent, or representative.

(b) The compensation received by any packager, agent, or representative of a certified 8(a) BD, HUBZone small business concern, WOSB/EDWOSB, or VOSB/SDVOSB in exchange for assisting the concern in obtaining any small business contracts, orders, BPAs, BAs, or BOAs must be reasonable in light of the service(s) performed by the packager, agent, or representative, and cannot be a fee that is a percentage of the gross value of the contract, order, BPA, BA or BOA.

(c) For good cause, SBA may initiate proceedings to suspend or revoke a packager's, agent's, or representative's privilege to assist applicants obtain SBA certification and assist certified small business concerns obtain contracts, orders, or any other assistance to support participation in the 8(a) BD, HUBZone, WOSB or VetCert programs. Good cause is defined in § 103.4 of this chapter.

(1) SBA may send a ''show cause'' letter requesting the agent or representative to demonstrate why the agent or representative should not be suspended or proposed for revocation, or may immediately send a written notice suspending or proposing revocation, depending upon the evidence in the administrative record. The notice will include a discussion of the relevant facts and the reason(s) why SBA believes that good cause exists.

(2) Unless SBA specifies a different time in the notice, the agent or representative must respond to the notice within 30 calendar days of the date of the notice with any facts or arguments showing why good cause does not exist. The agent or representative may request additional time to respond, which SBA may grant in its discretion.

(3) After considering the agent's or representative's response, SBA will issue a final determination, setting forth the reasons for this decision and, if a suspension continues to be effective or a revocation is implemented, the term of the suspension or revocation.

(d) The relevant SBA program office may refer a packager, agent, or other representative to SBA's Suspension and Debarment Official for possible Government-wide suspension or debarment where appropriate, including where it appears that the packager, agent, or representative assisted an applicant or certified small business concern to submit information to SBA that the packager, agent, or representative knew to be false or materially misleading.

PART 126—HUBZONE PROGRAM

■ 37. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

§ 126.100 [Amended]

■ 38. Amend § 126.100 by removing the words ''qualified SBCs'' and adding in their place the words ''small business concerns''.

§ 126.102 [Amended]

■ 39. Amend § 126.102 by removing the words ''qualified HUBZone SBCs'' and adding in their place the words ''certified HUBZone small business concerns''.

■ 40. Amend § 126.103 by:

■ a. Removing the definition for ''AA/BD'';

■ b. Revising the definitions for ''Attempt to maintain'', ''Certification or Certify'', ''Community Development Corporation or CDC'', ''Contracting Officer'', ''Decertify'', ''Dynamic Small Business Search (DSBS)'', ''Employee'', and ''Governor-Designated Covered Area'';

■ c. Adding in alphabetical order definitions for ''HUBZone certification date'', ''HUBZone Map'', and ''HUBZone resident employee'';

■ d. Revising the definitions for ''HUBZone small business concern or certified HUBZone small business concern'', ''Indian Tribal Government'', and ''Principal office'';

■ e. Removing paragraph (3) in the definition of ''Qualified Census Tract'';

■ f. Revising the definition of ''Qualified Disaster Area'';

■ g. Removing paragraph (4) in the definition of ''Qualified Non-Metropolitan County'';

■ h. Adding in alphabetical order the definition for ''Recertification (or certification renewal)'';

■ i. Revising the definitions for ''Redesignated Area'', ''Reside'', and ''Small business concern''; and

■ j. Adding in alphabetical order the definition for ''System for Award Management (SAM)''.

The revisions and additions read as follows:

§ 126.103 What definitions are important in the HUBZone program?

* * * * *

Attempt to maintain means making substantive and documented efforts to meet the HUBZone residency requirement, such as making written offers of employment, publishing advertisements seeking employees, and attending job fairs, and applies only during the performance of a HUBZone contract as defined in § 126.600. A firm that cannot demonstrate that it is making such efforts has failed to attempt to maintain the HUBZone residency requirement. In addition, a firm that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt to maintain the HUBZone residency requirement.

* * * * *

Certification or Certify means the process by which SBA determines that a concern is qualified for the HUBZone program and eligible to be designated by SBA as a certified HUBZone small business concern in DSBS (or successor system).

* * * * *

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805, *et seq.* or has received a letter from the Department of Health and Human Services affirming that it has received

assistance under a successor program to that authorized by 42 U.S.C. 9805.

* * * * *

Contracting Officer has the meaning given that term in 41 U.S.C. 2101(1), which defines a contracting officer as a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

* * * * *

Decertify means the process by which SBA removes a concern as a certified HUBZone small business concern from DSBS (or successor system) upon a finding that the firm does not meet the HUBZone eligibility requirements or after a firm voluntarily withdraws from the HUBZone program.

Dynamic Small Business Search (DSBS) means the database that government agencies use to find small business contractors for upcoming contracts. The information a business provides when registering in SAM, as defined in this section, is used to populate DSBS. For HUBZone Program purposes, a concern's DSBS profile will indicate whether it is a certified HUBZone small business concern, and if so, the date it was certified.

Employee means an individual employed on a full-time, part-time, or other basis, so long as that individual generally works a minimum of 10 hours per week during the four-week period immediately prior to the relevant date of review. SBA may permit an individual to count as an employee if that individual works less than 10 hours in any week during the four-week period immediately prior to the relevant date of review provided the individual works at least 40 hours during that four-week period and the concern demonstrates a legitimate business reason for that work schedule.

(1) To determine the number of hours worked by each individual employed by the business concern, SBA will review a concern's payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the relevant date of review. To determine if an individual is an employee, SBA reviews the totality of circumstances, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and the factors set forth in SBA's Size Policy Statement No. 1 (51 FR 6099, February 20, 1986).

(2) In general, the following are considered employees:

(i) Individuals obtained from a temporary employee agency, from a concern primarily engaged in leasing employees, or through a union agreement, or co-employed pursuant to a Professional Employer Organization agreement;

(ii) An individual who has an ownership interest in the concern and who works for the concern 80 hours or more during the four-week period immediately prior to the relevant date of review, whether or not the individual receives compensation;

(iii) An owner who works less than 80 hours during the four-week period immediately prior to the relevant date of review, where another individual has not been hired to manage and direct the actions of the concern's employee(s);

(iv) Reservists or National Guard members when called to active duty; and

(v) Individuals who are on annual, sick, or maternity leave and continue to be paid by the business concern.

(3) In general, the following are not considered employees:

(i) Individuals who are not owners and receive no compensation for work performed;

(ii) Individuals who receive deferred compensation for work performed;

(iii) Independent contractors to whom payments are reported via IRS Form 1099 and who are not otherwise considered employees under SBA's Size Policy Statement No. 1; and

(iv) Subcontractors.

(4) Employees of an affiliate may be considered employees, if the totality of the circumstances shows that there is no clear line of fracture between the HUBZone applicant (or certified HUBZone small business concern) and its affiliate(s) (*see* § 126.204).

(5) An individual must perform work for the concern to be considered an employee for HUBZone purposes. SBA may require evidence that an individual is performing work, including but not limited to the following: a job description; the individual's resume; timesheets; proof of onboarding and/or training; evidence of regular communication assigning work to the individual and responses to such communication; examples of work product commensurate with hours worked; documentation demonstrating the individual's participation in online or telephonic meetings with supervisors or colleagues, such as meeting invitations, notes from meetings, post-meeting questions or assignments; written attestations; and other relevant documentation.

Governor-Designated Covered Area means an area that SBA has designated as a HUBZone by approving a Governor-generated petition pursuant to the procedures described in § 126.104.

* * * * *

HUBZone certification date means the date on which SBA approves a concern's application for HUBZone certification and is the date specified in the concern's certification letter. If a concern leaves the HUBZone program and reapplies for certification, its HUBZone certification date is the date SBA approves the concern's most recent application.

HUBZone Map means a publicly accessible online tool that depicts HUBZones.

HUBZone resident employee means an individual who meets the definition of an employee and who SBA has determined resides in a HUBZone.

HUBZone small business concern or certified HUBZone small business concern means a small business concern that meets the requirements described in § 126.200 and that SBA has certified as eligible for Federal contracting assistance under the HUBZone program.

* * * * *

Indian Tribal Government means the governing body of any Indian Tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the Tribe, band, nation, group, or community resides.

* * * * *

Principal Office means the location where the greatest number of the concern's employees at any one location perform their work.

(1) In order for a location to be considered the principal office, the concern must provide a deed or an active lease that includes a start date that was at least 30 calendar days prior to the relevant date of review, and an end date that is at least 60 calendar days after the relevant date of review, as well as any other documentation requested by SBA;

(2) In order for a location to be considered the principal office, the concern must conduct business at this location. The concern may be required to demonstrate that it is doing so by submitting evidence including but not limited to the following:

(i) Photos and/or a live or virtual walk-through of the space; and

(ii) For shared working spaces, evidence that the firm has dedicated space within any shared location, and that such dedicated space contains

sufficient work surface area, furniture, and equipment to accommodate the number of employees claimed to work from this location;

(3) If an employee works at multiple locations, then the employee will be deemed to work at the location where the employee spends more than 50% of his or her time. If an employee does not spend more than 50% of his or her time at any one location and at least one of those locations is a non-HUBZone location, then the employee will be deemed to work at a non-HUBZone location.

(4) For those concerns whose ''primary industry classification'' is services or construction (*see* § 121.201 of this chapter), the determination of principal office excludes the concern's employees who perform more than 50% of their work at job-site locations to fulfill specific contract obligations. If all of a concern's employees perform more than 50% of their work at job sites, the concern does not comply with the principal office requirement.

(i) *Example 1:* A business concern whose primary industry is construction has a total of 78 employees, including the owners. The business concern has one office (Office A), which is located in a HUBZone, with 3 employees working at that location. The business concern also has a job-site for a current contract, where 75 employees perform more than 50% of their work. The 75 job-site employees are excluded for purposes of determining principal office. Since the remaining 3 employees all work at Office A, Office A is the concern's principal office. Since Office A is in a HUBZone, the business concern complies with the principal office requirement.

(ii) *Example 2:* A business concern whose primary industry is services has a total of 4 employees, including the owner. The business concern has one office located in a HUBZone (Office A), where 2 employees perform more than 50% of their work, and a second office not located in a HUBZone (Office B), where 2 employees perform more than 50% of their work. Since there is not one location where the greatest number of the concern's employees at any one location perform their work, the business concern would not have a principal office in a HUBZone.

(iii) *Example 3:* A business concern whose primary industry is services has a total of 6 employees, including the owner. Five of the employees perform all of their work at job-sites fulfilling specific contract obligations. The business concern's owner performs 45% of her work at job-sites, and 55% of her work at an office located in a HUBZone (Office A) conducting tasks such as writing proposals, generating payroll, and responding to emails. Office A would be considered the principal office of the concern since it is the only location where any employees of the concern work that is not a job site and the 1 individual working there spends more than 50% of her time at Office A. Since Office A is located in a HUBZone, the small business concern would meet the principal office requirement.

* * * * *

Qualified Disaster Area. (1) Qualified Disaster Area means any census tract or non-metropolitan county located in an area where a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) has occurred or an area in which a catastrophic incident has occurred if such census tract or non-metropolitan county ceased to be a Qualified Census Tract or Qualified Non-Metropolitan County during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred.

(2) A census tract or non-metropolitan county shall be considered to be a Qualified Disaster Area for the period of time starting on the date on which the President declared the major disaster for the area in which the census tract or non-metropolitan county, as applicable, is located (or in the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or non-metropolitan county, as applicable, is located) and ending on the date when SBA next updates the HUBZone Map in accordance with § 126.104(a).

* * * * *

Recertification (or certification renewal), for purposes of this subpart, means the process by which a concern represents that it continues to meet the requirements of the HUBZone program.

Redesignated Area means any census tract that ceases to be a Qualified Census Tract or any non-metropolitan county that ceases to be a Qualified Non-Metropolitan County. A Redesignated Area generally shall be treated as a HUBZone for a period of three years, starting from the date on which the area ceased to be a Qualified Census Tract or a Qualified Non-Metropolitan County. The date on which the census tract or non-metropolitan county ceases to be qualified is the date on which the official government data affecting the eligibility of the HUBZone is released to the public.

Reside means to live at a location full-time and for at least 90 calendar days immediately prior to the relevant date of review.

(1) To determine residence, SBA will first look to an individual's address identified on his or her driver's license or other government-issued identification card. Where such documentation is not available (or where the address on the individual's driver's license does not match the residence claimed), SBA will require other specific proof of residency, such as deeds, leases, and/or utility bills, as well as an explanation as to why a driver's license is unavailable or inconsistent.

(2) For HUBZone purposes, SBA will consider individuals temporarily residing overseas in connection with the performance of a contract to reside at their U.S. residence.

(i) *Example 1:* A person possesses the deed to a residential property and pays utilities and property taxes for that property. However, the person does not live at this property, but instead rents out this property to another individual. For HUBZone purposes, the person does not reside at the address listed on the deed and is not considered a HUBZone employee.

(ii) *Example 2:* A person moves into an apartment under a month-to-month lease and lives in that apartment full-time. SBA would consider the person to reside at the address listed on the lease if the person can show that he or she has lived at that address for at least 90 calendar days immediately prior to the relevant date of review.

(iii) *Example 3:* A person is working overseas on a contract for the small business and is therefore temporarily living abroad. The employee can provide documents showing he has paid rent for an apartment located in a HUBZone for at least 90 calendar days immediately prior to the relevant date of review. That person is deemed to reside in a HUBZone.

* * * * *

Small business concern means a concern that, with its affiliates, meets the size standard corresponding to any NAICS code listed in its profile in the System for Award Management (or successor system), pursuant to part 121 of this chapter.

System for Award Management (SAM) has the same meaning as in FAR 2.101.

■ 41. Revise § 126.104 as follows:

§ 126.104 How can a Governor petition for the designation of a Governor-designated cover area?

(a) *Petition.* Each calendar year, the Governor of a State may submit a

petition to the SBA Office of the HUBZone Program requesting that certain covered areas be designated as Governor-designated covered areas. For a specific covered area to receive a designation as a Governor-designated covered area, the Governor of the State in which the identified covered area is wholly contained shall include such area in a petition to SBA requesting such a designation.

(1) A Governor may submit not more than one petition described in this section per calendar year.

(2) The petition described in this section shall include all covered areas in a State for which the Governor seeks designation as a Governor-designated covered area. The total number of covered areas included in such petition may not exceed ten percent of the total number of covered areas in the State.

(3)(i) The total number of covered areas in a State shall be calculated by aggregating the number of census tracts and counties that qualify as covered areas as described in paragraph (d) of this section.

(ii) A petition need not seek SBA approval for those covered areas previously designated as Governor-designated covered areas.

(b) *SBA Review.* In reviewing a request for designation included in such a petition, SBA may consider:

(1) The potential for job creation and investment in the covered area;

(2) The demonstrated interest of small business concerns in the covered area to be designated as a Governor-designated covered area;

(3) How State and local government officials have incorporated the covered area into an economic development strategy; and

(4) If the covered area was a HUBZone before becoming the subject of the petition, the impact on the covered area if the Administrator did not approve the petition.

(c) *SBA Decision.* The AA/GCBD (or designee) is authorized to grant the petitions described in this section. If the AA/GCBD (or designee) grants a petition described in this section, SBA will issue a written notice to the petitioning Governor and add the newly designated Governor-designated covered areas to the HUBZone Map.

(d) *Length of designation.* A Governor-designated covered area will be treated as a HUBZone until SBA next updates the HUBZone Map in accordance with § 126.105(a), or one year after the petition is approved, whichever is later.

(e) *Definitions.* In this section:

(1) The term ''covered area'' means a census tract or county in a State—

(i) That is located outside of an urban area, as determined by the Bureau of the Census, with a population of not more than 50,000; and

(ii) For which the average unemployment rate is at least 120 percent of the average unemployment rate of the United States or of the State in which the covered area is located, whichever is less, based on the most recent data available from the American Community Survey conducted by the Bureau of the Census.

(2) The term ''Governor'' means the chief executive of a State.

(3) The term ''State'' means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

■ 42. Add § 126.105 to read as follows:

§ 126.105 How often will the HUBZone Map be updated?

The HUBZone Map will be updated as follows:

(a) Qualified Census Tracts and Qualified Non-Metropolitan Counties will be updated every 5 years.

(b) Redesignated Areas will be added to the HUBZone Map when areas cease to be designated as Qualified Census Tracts or Qualified Non-Metropolitan Counties, in accordance with the 5-year cycle described in paragraph (a) of this section, and will be removed after 3 years.

(c) Qualified Base Closure Areas will be added to the HUBZone Map after SBA receives information from the Department of Defense that a new base closure area has been created and will be removed after 8 years.

(d) Qualified Disaster Areas generally will be added to the HUBZone Map on a monthly basis, based on data received by SBA from the Federal Emergency Management Agency (FEMA), and generally will be removed on the effective date of the 5-year HUBZone Map update following the declaration.

(e) Governor-Designated Covered Areas will be added to the HUBZone Map after SBA approves a petition in accordance with § 126.104 and will be removed on the effective date of the 5-year HUBZone Map update following the approval, or one year after the petition is approved, whichever is later.

■ 43. Amend § 126.200 by:

■ a. Revising paragraphs (b)(1) and (c)(1);

■ b. Adding a paragraph heading in paragraph (c)(2);

■ c. Revising paragraph (d)(1);

■ d. Adding a paragraph heading in paragraph (d)(2);

■ e. Revising paragraph (d)(3);

■ f. Revising paragraphs (e), (f), and (g); and

The revisions and additions read as follows:

§ 126.200 What requirements must a concern meet to be eligible as a certified HUBZone small business concern?

* * * * *

(b) * * *

(1) In order to be eligible for HUBZone certification and recertification, a concern, together with its affiliates, must qualify as a small business concern as defined in part 121 of this chapter under the size standard corresponding to any NAICS code listed in its profile in SAM (or successor system). In determining whether a concern qualifies as small under the size standard corresponding to a specific NAICS code, SBA will accept the concern's size representation in SAM (or successor system), unless there is evidence indicating that the concern is other than small. SBA will request a formal size determination pursuant to § 121.1001(b)(8) of this chapter where any information it possesses calls into question the concern's SAM size representation.

* * * * *

(c) * * *

(1*) Long-term investment*—(i) *General.* A concern that has purchased a building or entered a long-term lease of at least 10 years for a property in a HUBZone (other than in a Redesignated Area or Qualified Disaster Area) will be deemed to have its principal office located in a HUBZone for up to 10 years from the date of the investment, as long as that building or property qualifies as the concern's principal office and continues to qualify as the concern's principal office, and as long as the firm maintains the long-term lease or continues to be the sole owner of the property.

(ii) *Commencement of 10-year period.* The 10-year principal office long-term investment protection period starts to run on the firm's HUBZone certification date (if the investment was made prior to the firm's certification) or on the date of the investment (if the investment was made after the firm's HUBZone certification date).

Example 1 to paragraph (c)(2)(i): If a firm was certified on March 31, 2020, and purchased a building on July 20, 2020, the 10-year clock would begin when the firm recertifies as of July 29, 2020.

(iii) *Exceptions.* The following do not qualify for this provision:

(A) An office located in a Redesignated Area or Qualified Disaster

Area at the time of initial HUBZone certification;

(B) An office that is shared with one or more other concerns or individuals;

(C) Any location being used as a personal residence; or

(D) An investment made within 180 calendar days of the expiration of an area's designation as a Qualified Census Tract, Qualified Non-Metropolitan County, Governor-Designated Covered Area, or Qualified Base Closure Area.

(2) *Tribally-owned concerns.* * * * * * * * * * *

(d) * * *

(1) *General.* In order to be eligible for HUBZone certification, at least 35% of a concern's employees must qualify as HUBZone resident employees. When determining the percentage of employees that must reside in a HUBZone to meet the 35% HUBZone residency requirement, if the percentage results in a fraction, SBA rounds to the nearest whole number, except for a firm with only one employee. For firms with only one employee, that one employee must reside in a HUBZone.

Example 1 to paragraph (d)(1): A concern has 25 employees; 35% of 25, or 8.75, employees must reside in a HUBZone. The number 8.75 rounded to the nearest whole number is 9. Thus, 9 employees must reside in a HUBZone.

Example 2 to paragraph (d)(1): A concern has 95 employees; 35% of 95, or 33.25, employees must reside in a HUBZone. The number 33.25 rounded to the nearest whole number is 33. Thus, 33 employees must reside in a HUBZone.

(2) *Tribally-owned concerns.* * * *

(3) *Legacy HUBZone employees.* (i) An individual will be considered a Legacy HUBZone Employee and count as a HUBZone resident employee, even if the employee subsequently moves to a location that is not in a HUBZone or the area in which the employee's residence is located no longer qualifies as a HUBZone, if the individual:

(A) Continues to live in a HUBZone for at least 180 calendar days immediately after the firm's HUBZone certification date (or recertification date); and

(B) Continues to meet the definition of ''employee'' in § 126.103 continuously and without interruption.

(ii) A certified HUBZone small business concern may have up to four Legacy HUBZone Employees at a given time, but must have at least one other HUBZone employee in order for any legacy employee to count as a HUBZone employee.

(iii) The certified HUBZone small business concern must maintain records of the Legacy HUBZone Employee's original HUBZone address, as well as records of any HUBZone other address in which the individual resided, as well as records of the individual's continuous and uninterrupted employment by the HUBZone small business concern, for the duration of the concern's participation in the HUBZone program. In order to demonstrate that an individual resided in a HUBZone for 180 days after certification (or recertification), the concern must submit to SBA copies of leases, utility bills, or property tax records.

(iv) The certification date or recertification date being used to establish the HUBZone residency of the employee must be after December 26, 2019.

(v) The following individuals do not qualify as Legacy HUBZone Employees:

(A) An individual who initially qualified as a HUBZone Resident Employee by residing in a Redesignated Area or a Qualified Disaster Area; and

(B) An individual who works less than 30 hours per week.

Example 1 to paragraph (d)(3): As part of its application for HUBZone certification, a concern provides documentation showing that it has ten employees, four of which reside in HUBZones. SBA certifies the concern as a certified HUBZone small business concern. More than 180 days after being certified, two individuals who qualified as HUBZone Resident Employees, and were critical to the concern's meeting the 35% residency requirement, move out of the HUBZone area but continuously remain employees of the concern. Because the business concern has two other employees who still live in a HUBZone, both of the individuals who may be treated as Legacy Employees and count as HUBZone Resident Employees for purposes of recertification.

(e) *Attempt to maintain.* (1) At the time of application, each recertification required by § 126.500(a), and offer for a HUBZone contract, a concern must certify that it will ''attempt to maintain'' (*see* § 126.103) having at least 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(2) At the time of recertification, a firm that is currently performing a HUBZone contract and falls below the 35% HUBZone residency requirement may recertify as a HUBZone small business concern as long as at least 20% of its total employees reside in a HUBZone and it is making substantive and documented efforts to meet the HUBZone residency requirement.

(3) During performance of a HUBZone contract, a HUBZone small business concern must attempt to maintain having at least 35% of its employees residing in HUBZones.

(f) *Suspension and Debarment.* At the time of application and at all times while a concern is HUBZone-certified, such concern and any of its owners must not have an active exclusion in SAM.

(g) *Federal financial obligations.* A business concern is ineligible to be certified as a HUBZone small business concern or to participate in the HUBZone program if either the concern or any of its principals has failed to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing. However, a small business concern may be eligible if the concern or the affected principals can demonstrate that they are current on an approved repayment plan, or the financial obligations owed have been settled and discharged/forgiven by the Federal Government.

■ 44. Amend § 126.201 by revising the section heading, and the first sentence of the introductory text to read as follows:

§ 126.201 Who does SBA consider to be an owner of a HUBZone small business concern?

For purposes of qualifying for HUBZone certification, SBA considers any person who owns any legal or equitable interest in a concern to be an owner of the concern. * * * * * * * * * * *

§ 126.202 [Amended]

■ 45. Amend § 126.202 by removing the word ''SBC'' in the section heading and in the first sentence and adding in its place the words ''small business concern'', and removing the third and fourth sentences.

■ 46. Amend § 126.204 by:
■ a. Revising paragraph (a);
■ b. Removing the words ''all information'' in the introductory text of paragraph (c) and adding in their place the words ''the totality of circumstances'';
■ c. Revising paragraph (c)(3); and
■ d. Adding paragraph (c)(4).

The revisions and addition read as follows:

§ 126.204 May a HUBZone small business concern have affiliates?

(a) A HUBZone small business concern may have affiliates, provided that the HUBZone small business

concern, together with its affiliates, qualifies as a small business concern as defined in part 121 of this chapter under the size standard corresponding to any NAICS code listed in its profile in SAM (or successor system), except as otherwise provided for small agricultural *cooperatives.gov* in § 126.103.

* * * * *

(c) * * *

(3) Minimal business activity between the concern and its affiliate alone will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.

(4) SBA will not treat the employees of one company as employees of another for HUBZone program purposes if the two firms would not be considered affiliated for size purposes under Part 121 of this chapter.

Example 1 to paragraph (c): X owns 100% of Company A and 51% of Company B. Based on X's common ownership of A and B, the two companies are affiliated under SBA's size regulations. SBA will look at the totality of circumstances to determine whether it would be reasonable to treat the employees of B as employees of A for HUBZone program purposes. If both companies do construction work and share office space and equipment, then SBA would find that there is not a clear line of fracture between the two concerns and would treat the employees of B as employees of A for HUBZone program purposes. In order to be eligible for the HUBZone program, at least 35% of the combined employees of A and B must reside in a HUBZone.

§ 126.302 [Amended]

■ 47. Amend § 126.302 by removing the last sentence.

■ 48. Revise § 126.303 to read as follows:

§ 126.303 Where must a concern submit its application for certification?

A concern seeking certification as a HUBZone small business concern must submit an electronic application to SBA's HUBZone Program Office via SBA's website at *https://SBA.gov*. The majority owner must take responsibility for the accuracy of all information submitted on behalf of the applicant.

■ 49. Amend § 126.304 by revising paragraph (e) to read as follows:

§ 126.304 What must a concern submit to SBA in order to be certified as a HUBZone small business concern?

* * * * *

(e) *Records maintenance.* (1) HUBZone small business concerns must retain documentation demonstrating satisfaction of all qualifying requirements for 6 years from the date of submission of all initial and continuing eligibility actions.

(2) HUBZone small business concerns must retain documentation related to ''Legacy HUBZone employees,'' as described in § 126.200(d)(3).

■ 50. Amend § 126.306 by:

■ a. Revising paragraph (d);

■ b. Removing the words ''System for Award Management'' in paragraph (g) and adding in their place the word ''SAM''; and

■ c. Adding paragraph (h).

The revision and addition read as follows:

§ 126.306 How will SBA process an application for HUBZone certification?

* * * * *

(d) An applicant must be eligible as of the date SBA issues a decision.

* * * * *

(h) SBA's decision to approve or deny an application is the final agency decision.

§ 126.308 [Amended]

■ 51. Amend § 126.308 in paragraph (b) by removing the words ''System for Award Management'' and adding in their place the word ''SAM''.

■ 52. Revise § 126.309 to read as follows:

§ 126.309 May a declined or decertified concern apply for certification at a later date?

(a) A concern that SBA has declined may apply for certification after ninety (90) calendar days from the date of decline if it believes that it has overcome all reasons for decline through changed circumstances and is currently eligible.

(b) A concern that SBA has decertified may apply for certification immediately after the date of decertification, if it believes that it has overcome all reasons for decertification through changed circumstances and is currently eligible.

(c) A concern that voluntarily withdraws from the HUBZone program may immediately re-apply for certification, if it believes that it is currently eligible.

■ 53. Revise § 126.401 to read as follows:

§ 126.401 What is a program examination?

A program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of the HUBZone application process, as part of the recertification process, or in connection with a HUBZone contract.

■ 54. Amend § 126.403 by revising paragraphs (a) and (b) to read as follows:

§ 126.403 What will SBA review during a program examination?

(a) SBA will determine the scope of a program examination and may review any information related to the concern's HUBZone eligibility including, but not limited to, documentation related to the concern's size, principal office, ownership, compliance with the 35% HUBZone residency requirement, and compliance with the ''attempt to maintain'' (*see* § 126.103) requirement. A representative from SBA may visit one or more of a concern's offices as part of a program examination.

(b) SBA may require that a HUBZone small business concern submit additional information as part of the program examination. If SBA requests additional information, SBA will presume that written notice of the request was provided when SBA sends such request to the concern at an email address provided in the concern's profile in DSBS or SAM (or successor systems). The burden of proof to demonstrate eligibility is on the concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may draw an adverse inference and presume that the information that the concern failed to provide would demonstrate ineligibility and decertify the concern (or deny certification) on this basis.

* * * * *

■ 55. Amend § 126.404 by revising paragraphs (b) and (c) to read as follows:

§ 126.404 What are the possible outcomes of a program examination and when will SBA make its determination?

* * * * *

(b) If SBA determines that the concern is eligible, SBA will send a written notice to the HUBZone small business concern and continue to designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

(c) If SBA determines that the concern is not eligible, the firm will be suspended from the HUBZone program. The concern will have 30 calendar days to submit sufficient documentation showing that it was in fact eligible on the date of review. During the suspension period, SBA will remove the firm as a certified HUBZone small business concern from DSBS. In addition, the concern may not compete for or be awarded a HUBZone contract during that suspension period and must provide written notice of the concern's

ineligibility to the contracting officer for any pending HUBZone award. If such concern fails to submit documentation sufficient to demonstrate its eligibility, the concern will be decertified. If SBA overturns its determination, SBA will lift the suspension and reinstate the firm as an eligible certified HUBZone small business concern in DSBS.

■ 56. Revise § 126.500 to read as follows:

§ 126.500 How does a concern maintain HUBZone certification?

(a) *Recertification.* (1) Any concern seeking to remain a certified HUBZone small business concern in DSBS (or successor system) must recertify to SBA that it continues to meet all HUBZone eligibility criteria (*see* § 126.200) every three years. In order to recertify—

(i) A certified HUBZone small business concern that was not awarded a HUBZone contract during the 12-month period preceding its recertification must represent that, at the time of its recertification, at least 35% of its employees reside in HUBZones and the concern's principal office is located in a HUBZone.

(ii) A certified HUBZone small business concern that was awarded a HUBZone contract during the 12-month period preceding its recertification must represent that, at the time of its recertification, it is attempting to maintain compliance with the 35% HUBZone residency requirement and the concern's principal office is located in a HUBZone.

(2) The concern's recertification must be submitted in the 90 calendar days before the triennial anniversary of its HUBZone certification date.

(3) If a concern fails to recertify, SBA will decertify the concern at the end of its eligibility period. However, if a concern is able to recertify its eligibility within 30 days of the end of its eligibility period, SBA will reinstate the firm as a certified HUBZone small business concern.

(4) For a certified HUBZone small business concern that is also a certified WOSB or SDVOSB, the firm may have to recertify less than three years after its previous recertification in order to align certification date.

(b) *Program examinations.* SBA will conduct a program examination of each certified HUBZone small business concern at least once every three years to ensure continued program eligibility, but may conduct more frequent program examinations using a risk-based analysis to select which concerns are examined.

■ 57. Revise § 126.501 to read as follows:

§ 126.501 What are a certified HUBZone small business concern's ongoing obligations to SBA?

A certified HUBZone small business concern that acquires, is acquired by, or merges with another business entity must provide evidence to SBA, within 30 calendar days of the transaction becoming final, that the concern continues to meet the HUBZone eligibility requirements. A concern that no longer meets the requirements may voluntarily withdraw from the program or it will be removed by SBA pursuant to program decertification procedures.

§ 126.502 [Amended]

■ 58. Amend § 126.502 by removing the words ''§§ 126.200, 126.500, and 126.501'' and adding in their place the words ''§§ 126.200, 126.500, and 126.501, and all other requirements described in this part''.

■ 59. Amend § 126.503 by:
■ a. Revising paragraphs (a) and (c);
■ b. Redesignating paragraph (d) as paragraph (e);
■ c. Adding new paragraph (d); and
■ d. Revising the first sentence of redesignated paragraph (e).

The revisions and addition read as follows:

§ 126.503 What happens if SBA is unable to verify a HUBZone small business concern's eligibility or determines that a concern is no longer eligible for the program?

(a) *Proposed decertification*—(1) *Bases for proposed decertification.* SBA may propose a certified HUBZone small business concern for decertification from the HUBZone program if:

(i) SBA has found the concern to be ineligible based on a program examination;

(ii) The concern failed to respond to a program examination;

(iii) SBA has information indicating that the concern is performing a HUBZone but is not attempting to maintain (*see* § 126.103) compliance with the 35% HUBZone residency requirement; or

(iv) SBA is unable to verify the concern's eligibility or otherwise has information indicating that the concern may not meet the eligibility requirements of this part,

(2) *Notice of proposed decertification.* SBA will notify the HUBZone small business concern by email that SBA is proposing to decertify it and state the reason(s) for the proposed decertification. The notice of proposed decertification will notify the concern that it has 30 calendar days from the date SBA emails the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify decertification. SBA will consider that written notice was provided if SBA sends the notice of proposed decertification to the concern at the email address provided in the concern's profile in DSBS (or successor system).

(3) *Response to notice of proposed decertification.* The HUBZone small business concern must submit a written response to the notice of proposed decertification within the timeframe specified in the notice. In this response, the concern must rebut each of the reasons set forth by SBA in the notice of proposed decertification, and where appropriate, the rebuttal must include documents showing that the concern is eligible for the HUBZone program as of the date specified in the notice.

(4) *Adverse inference.* If a HUBZone small business concern fails to cooperate with SBA or fails to provide the information requested, SBA may draw an adverse inference and assume that the information that the concern failed to provide would demonstrate ineligibility.

(5) *SBA's decision.* SBA will determine whether the HUBZone small business concern remains eligible for the program within 90 calendar days after receiving all requested information, when practicable. SBA will provide written notice to the concern stating the basis for the determination.

(i) If SBA finds that the concern is not eligible, SBA will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system).

(ii) If SBA finds that the concern is eligible, the concern will continue to be designated as a certified HUBZone small business concern in DSBS (or successor system).

* * * * *

(c) *Decertification based on false or misleading information.* (1) If SBA discovers that a certified HUBZone small business concern or its representative submitted false or misleading information, SBA will propose the firm for decertification. In addition, SBA will refer the matter to the SBA Office of Inspector General for review and may recommend that Government-wide debarment or suspension proceedings be initiated.

(2) A firm that is decertified from the HUBZone program due to the submission of false or misleading information may be removed from SBA's other small business contracting programs, including the 8(a) Business Development Program, the Women-Owned Small Business (WOSB)

Program, the Veteran Small Business Certification (VetCert) Program, and SBA's Mentor-Protégé Program.

(3) A firm that is decertified or terminated from the 8(a) BD Program, the WOSB Program, or the VetCert Program due to the submission of false or misleading information may be decertified from the HUBZone Program.

(4) SBA may require a firm that is decertified or terminated from the HUBZone Program, 8(a) BD Program, the WOSB Program, or the VetCert Program due to the submission of false or misleading information to enter into an administrative agreement with SBA as a condition of admission or re-admission to the HUBZone program.

(d) *Decertification due to debarment.* If a certified HUBZone small business concern is debarred from Federal contracting, SBA will decertify the HUBZone small business concern immediately and change the concern's status in DSBS (or successor system) to reflect that it no longer qualifies as a certified HUBZone small business concern, without first proposing it for decertification.

(e) * * * Once SBA has decertified a concern, the concern is ineligible for the HUBZone program and may not submit an offer or quote for a HUBZone contract. * * *

■ 60. Amend § 126.504 by:
■ a. Removing the word ''or'' at the end of paragraph (a)(2);
■ b. Redesignating paragraph (a)(3) as (a)(4);
■ c. Adding new paragraph (a)(3);
■ d. Removing the words ''pursuant to § 126.501(b)'' in newly redesignated paragraph (a)(4); and
■ e. Removing paragraph (c).

The addition reads as follows:

§ 126.504 When will SBA remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern?

(a) * * *

(3) Been debarred pursuant to the procedures in FAR 9.4; or

* * * * *

■ 61. Revise § 126.600 to read as follows:

§ 126.600 What are HUBZone contracts?

HUBZone contracts are prime contracts awarded to a certified HUBZone small business concern (or a HUBZone joint venture that complies with the requirements of § 126.616), regardless of the place of performance, through any of the following procurement methods:

(a) Sole source awards awarded pursuant to § 126.612 to certified HUBZone small business concerns (or HUBZone joint ventures that comply with the requirements of § 126.616);

(b) Set-aside awards (including partial set-asides and set-aside multiple award contracts) based on competition restricted to certified HUBZone small business concerns;

(c) Awards through full and open competition after the HUBZone price evaluation preference is applied to an other than small business in favor of a certified HUBZone small business;

(d) Awards based on a reserve for certified HUBZone small business in an unrestricted solicitation;

(e) Orders awarded to certified HUBZone small business concerns under a multiple award contract that was set-aside for certified HUBZone small business concerns;

(f) Orders set-aside for certified HUBZone small business concerns under a multiple award contract that was awarded using full and open competitive procedures;

(g) Orders set-aside for certified HUBZone small business concerns under a multiple award contract that was awarded as a small business set-aside.

■ 62. Amend § 126.601 by revising paragraphs (a), (b)(1), and (e), and adding paragraph (f) to read as follows:

§ 126.601 What additional requirements must a certified HUBZone small business concern meet to submit an offer on a HUBZone contract?

(a) Only certified HUBZone small business concerns are eligible to submit offers for a HUBZone contract or to receive a price evaluation preference under § 126.613.

(1) An offeror for a HUBZone contract must be identified as a certified HUBZone small business concern in DSBS (or successor system) and meet the HUBZone requirements in § 126.200 as of the date it submits its initial offer that includes price.

(2) A certified HUBZone small business concern that was awarded a HUBZone contract during the 12-month period prior to submitting an offer relating to the award of another HUBZone contract may submit an offer and be eligible as a certified HUBZone small business concern as long as at least 20% of its total employees reside in a HUBZone and it is making substantive and documented efforts to meet the HUBZone residency requirement.

(3) For a multiple award contract, where concerns are not required to submit price as part of the offer for the contract, an offeror must be identified as a certified HUBZone small business concern in DSBS (or successor system) and meet the HUBZone requirements in § 126.200 as of the date it submits its initial offer, which may not include price.

(4) A HUBZone joint venture must have its joint venture agreement in place that complies with the requirements in § 126.616 as of its final offer.

(5) As long as a concern was a certified HUBZone small business and met the HUBZone requirements as of the date of its initial offer for a HUBZone contract, it may be awarded a HUBZone contract even if it no longer appears as a certified HUBZone small business concern on DSBS, or successor system, or no longer qualifies as an eligible HUBZone small business on the date of award.

(b) * * *

(1) Is a certified HUBZone small business concern in DSBS (or successor system) and meets the HUBZone requirements in § 126.200, including having 35% of its employees residing in HUBZones and having its principal office located in a HUBZone;

* * * * *

(e) For two-step procurements to be awarded as HUBZone contracts (*e.g.,* architect-engineering and design-build procurements), a certified HUBZone small business concern must be eligible as of the date that it submits its initial bid or proposal (which may or may not include price) during phase one.

(f) In general, an offeror on a HUBZone contract is not required to be HUBZone-certified on the date the contract is awarded. However, for HUBZone sole source contracts, the concern must be a certified HUBZone small business concern and meet the requirements in § 126.200 at the time of award and must qualify as small as of that date under the size standard corresponding to the NAICS code assigned to the procurement.

■ 63. Revise § 126.602 to read as follows:

§ 126.602 Must a certified HUBZone small business concern maintain the HUBZone employee residency percentage during contract performance?

(a) A certified HUBZone small business concern that has been awarded a HUBZone contract must ''attempt to maintain'' (*see* § 126.103) having 35% of its employees residing in a HUBZone during the performance of any HUBZone contract. If a certified HUBZone small business concern is awarded a HUBZone contract within 12 months prior to the due date for its triennial recertification, then such concern must attempt to maintain compliance with the 35% HUBZone

residency requirement at the time of such recertification. However, such a concern must have at least 35% of its employees residing in HUBZones at the time of each recertification thereafter, even if the concern is still performing that HUBZone contract.

(b) For orders under indefinite delivery, indefinite quantity contracts (including orders under multiple award contracts), a certified HUBZone small business concern must ''attempt to maintain'' the HUBZone residency requirement during the performance of each order that is set aside for HUBZone small business concerns.

(c) A certified HUBZone small business concern that is tribally-owned, and made the certification in § 126.200(c)(2)(ii) at the time of its HUBZone certification (or at the time of its most recent recertification), must have at least 35% of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation.

(d) A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt to maintain the HUBZone residency requirement. Such failure will result in proposed decertification pursuant to § 126.503.

§ 126.603 [Amended]

■ 64. Amend § 126.603 by removing the word ''concernwill'' and adding in its place the words ''concern will''.

§ 126.604 [Amended]

■ 65. Amend § 126.604 by removing the words ''makes this decision'' and adding in their place the words ''determines if a contract opportunity for HUBZone set-aside competition exists''.

§ 126.605 [Amended]

■ 66. Amend § 126.605 by removing the word ''may'' in the introductory text and adding in its place the word ''shall''.

§ 126.607 [Amended]

■ 67. Amend § 126.607 by:

■ a. Removing the word ''must'' in the section heading and adding in its place the word ''may'';

■ b. Removing the words ''SDVO SBC'' wherever they appear in paragraphs (b)(1) and (b)(2) and adding in their place the words ''Veteran Small Business Certification''; and

■ c. Removing the words ''qualified HUBZone SBCs'' in paragraph (c)(1) and adding in their place the words ''certified HUBZone small business concerns''.

■ 68. Revise § 126.612 to read as follows:

§ 126.612 When may a contracting officer award sole source contracts to HUBZone small business concerns?

(a) A contracting officer may award a sole source contract to a HUBZone small business concern only when the contracting officer determines that:

(1) None of the provisions of §§ 126.605 or 126.607 apply;

(2) The anticipated award price of the contract, including options, will not exceed: (i) $7,000,000 for a contract assigned a manufacturing NAICS code, or

(ii) $4,500,000 for all other contracts.

(3) Two or more HUBZone small business concerns are not likely to submit offers;

(4) A HUBZone small business concern is a responsible contractor able to perform the contract; and

(5) In the estimation of the contracting officer, contract award can be made at a fair and reasonable price.

(6) The intended awardee is a certified HUBZone small business concern at the time of its initial offer and continues to be eligible on the date of award.

(b) A contracting officer may rely on the firm's status as a certified HUBZone small business concern in awarding a sole source HUBZone contract. However, if there is a status protest relating to the apparent successful offeror, SBA will determine eligibility as of the intended date of award.

■ 69. Amend § 126.613 by revising paragraph (a), adding paragraph headings in paragraphs (b) through (d), and adding a new paragraph (e).

The revisions and additions read as follows:

§ 126.613 How does a price evaluation preference affect the bid of a certified HUBZone small business concern in full and open competition?

(a) *General.* (1) Where a contracting officer will award a contract on the basis of full and open competition, the contracting officer must deem the price offered by a certified HUBZone small business concern to be lower than the price offered by an offeror that is not a small business concern if: the other than small business initially is the lowest responsive and responsible offeror, and the price offered by the certified HUBZone small business concern is not more than 10% higher than the price offered by the other than small business.

(2) The HUBZone price evaluation preference does not apply where the initial lowest responsive and responsible offeror is a small business concern.

(3) The HUBZone price evaluation preference does not apply to the portion of a multiple award contract that is reserved for certified HUBZone small business concerns. However, the HUBZone price evaluation preference does apply to the non-reserved portion of a multiple award contract.

(4) To apply the HUBZone price evaluation preference, the contracting officer must add 10% to the offer of the otherwise successful other than small business offeror. If the certified HUBZone small business concern's offer is lower than that of the other than small business after the preference is applied, the certified HUBZone small business concern must be deemed the lowest-priced offeror. For a best value procurement, the contracting officer must first apply the 10% price preference to the offers of any other than small businesses and then determine which offeror represents the best value to the Government, in accordance with the terms of the solicitation. Where, after considering the price evaluation adjustment, the offer of a certified HUBZone small business concern is determined to be the best value to the Government, award shall be made to the certified HUBZone small business concern.

Example 1 to paragraph (a): In a full and open competition procurement, a certified HUBZone small business concern submits an offer of $98, a non-HUBZone small business concern submits an offer of $95, and a large business submits an offer of $93. The initial lowest, responsive, responsible offeror is the large business. The contracting officer must then apply the HUBZone price evaluation preference because an offer was received from a certified HUBZone small business concern. After the application of the price preference, the HUBZone small business concern's offer is considered to be lower than the offer of the large business (*i.e.,* $98 is lower than $102.3 ($93 × 110%)). Since the certified HUBZone small business concern's offer is not more than 10% higher than the large business' offer, the certified HUBZone small business concern displaces the large business as the lowest, responsive, and responsible offeror. The non-HUBZone small business concern is unaffected by the preference because it was not the lowest offeror prior to the application of the preference.

Example 2 to paragraph (a): In a full and open competition procurement, a certified HUBZone small business concern submits an offer of $103, a non-HUBZone small business concern submits an offer of $100, and a large business submits an offer of $93. The initial lowest responsive and responsible offeror is the large business. The contracting officer must then apply the HUBZone price evaluation preference. After the application of the price preference, the HUBZone small business concern's offer is not lower than the offer of the large business (*i.e.,* $103 is not lower than $102.3 ($93 × 110%)). Since the certified HUBZone small business concern's offer is more than 10% higher than the large business' offer, the certified HUBZone small business concern does not displace the large business as the lowest offeror. In addition, the non-HUBZone small business concern's offer at $100 does not displace the large business' offer because a price evaluation preference is not applied to change an offer and benefit a non-HUBZone small business concern.

Example 3 to paragraph (a): In a full and open competition procurement, a certified HUBZone small business concern submits an offer of $98, a large business submits an offer of $95, and a non-HUBZone small business concern submits an offer of $93. The contracting officer would not apply the price evaluation preference in this procurement because the lowest, responsive, responsible offeror is a small business concern.

Example 4 to paragraph (a): In a full and open competition procurement, a certified HUBZone small business concern submits an offer of $98 and a large business submits an offer of $93. The contracting officer has stated in the solicitation that one contract will be reserved for a certified HUBZone small business concern. The contracting officer would not apply the price evaluation preference when determining which HUBZone small business concern would receive the contract reserved for HUBZone small business concerns but would apply the price evaluation preference when determining the awardees for the non-reserved portion.

(b) *Agricultural commodities.* * * *

(c) *International food aid operations.* * * *

(d) *Not treated as partial set-aside.* * * *

(e) *Applicability to HUBZone joint ventures.* The HUBZone price evaluation preference applies only to a joint venture consisting of a certified HUBZone small business concern and a small business concern that complies with the requirements of § 125.9. The HUBZone price evaluation preference does not apply to a joint venture consisting of a certified HUBZone small business concern and its other than small mentor.

■ 70. Revise § 126.615 to read as follows:

§ 126.615 May an other than small business participate on a HUBZone contract?

Except as provided in §§ 125.9 and 126.618, an other than small business may not participate as a prime contractor on a HUBZone award but may participate as a subcontractor to a certified HUBZone small business concern, subject to the limitations on subcontracting set forth in § 125.6.

■ 71. Amend § 126.616 by revising paragraphs (a)(1) and (e)(1)(i), and adding paragraph (l) to read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer and be eligible for award of a HUBZone contract?

(a) * * *

(1) SBA does not certify HUBZone joint ventures, but the joint venture should be designated as a HUBZone joint venture in SAM (or successor system) with the HUBZone-certified joint venture partner identified.

* * * * *

(e) * * *

(1) * * *

(i) It is a certified HUBZone small business concern that appears in DSBS (or successor system) as a certified HUBZone small business concern and it meets the eligibility requirements in § 126.200;

* * * * *

(l) *Non-HUBZone contracts.* On a non-HUBZone contract, for an award to a joint venture to be considered awarded to a certified HUBZone small business concern (*i.e.,* for a procuring agency to receive HUBZone credit for goaling purposes), the joint venture awardee must comply with the requirements of this section and § 125.8.

■ 72. Revise § 126.619 to read as follows:

§ 126.619 When must a certified HUBZone small business concern recertify its status for a HUBZone contract?

A prime contractor that receives an award as a certified HUBZone small business concern must comply with the recertification requirements set forth in § 125.12 of this chapter regarding its status as a certified HUBZone small business.

■ 73. Revise the subpart heading for subpart G to read as follows:

Subpart G—Limitations on Subcontracting Requirements

§ 126.701 [Amended]

■ 74. Amend § 126.701 by:

■ a. Removing the words ''these subcontracting percentages'' in the section heading and adding in their place the words ''the limitations on subcontracting''.

■ b. Removing the words ''the subcontracting percentage'' in the paragraph and adding in their place the words ''the limitations on subcontracting''.

■ 75. Revise § 126.800 to read as follows:

§ 126.800 Who may protest the status of a certified HUBZone small business concern?

(a) For a HUBZone sole source procurement, SBA or the contracting officer may protest the intended awardee's status as a certified HUBZone small business concern.

(b) For HUBZone contracts other than sole source procurements, including multiple award contracts (*see* § 125.1 of this chapter), SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's status as a certified HUBZone small business concern (or the HUBZone joint venture offeror's compliance with § 126.616).

(c) For other than HUBZone contracts, any offeror for that contract, the contracting officer or SBA may protest an apparent successful offeror's status as a certified HUBZone small business concern.

§ 126.801 [Amended]

■ 76. Amend § 126.801 by revising paragraphs (b), (c) and paragraph (d) introductory text to read as follows:

§ 126.801 How does an interested party file a HUBZone status protest?

* * * * *

(b) *Format and specificity.* (1) Protests must be in writing and must state all specific grounds as to why the protestor believes the protested concern did not qualify as a certified HUBZone small business concern. Specifically, a protestor must explain why:

(i) The protested concern did not meet the HUBZone eligibility requirements set forth in § 126.200;

(ii) The protested joint venture does not meet the requirements set forth in § 126.616;

(iii) The protested concern, as a HUBZone prime contractor, is unduly reliant on one or more small subcontractors that are not HUBZone-certified, or subcontractors that are not HUBZone-certified will perform the

primary and vital requirements of the contract; and/or

(iv) The protested concern that was awarded a HUBZone contract during the 12-month period prior to submitting the offer at issue has less than 20% of its total employees that reside in a HUBZone and/or is not making substantive and documented efforts to meet the HUBZone residency requirement.

(2) Specificity requires more than conclusions of ineligibility. A protest merely asserting that the protested concern did not qualify as a HUBZone small business concern, or that it did not meet the principal office and/or 35% residency requirements, without setting forth specific facts or allegations, is insufficient and will be dismissed.

(3) For a protest filed against a HUBZone joint venture, the protest must state all specific grounds as to why:

(i) The HUBZone small business partner to the joint venture did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time of offer; and/or

(ii) The protested HUBZone joint venture does not meet the requirements set forth in § 126.616 as of the date of its final proposal revision.

(4) For a protest alleging that the prime contractor has an ostensible subcontractor, the protest must state all specific grounds as to why:

(i) The protested concern is unduly reliant on one or more small subcontractors that are not HUBZone-certified, or

(ii) One or more subcontractors that are not HUBZone-certified will perform the primary and vital requirements of the contract.

(5) For a protest alleging that the protested concern failed to attempt to maintain compliance with the 35% HUBZone residency requirement during the performance of a HUBZone contract, the protest must state all specific grounds explaining why the protester believes that at least 20% of the protested firm's employees do not reside in a HUBZone and/or that the protested firm has not made any substantive and documented efforts to meet the HUBZone residency requirement.

(c) *Filing.* (1) An interested party other than a contracting officer or SBA must submit its written protest to the contracting officer.

(2) A contracting officer must submit his/her protest and forward an interested party's protest to SBA at *hzprotests@sba.gov*.

(d) *Timeliness.* A protest by an interested party challenging the HUBZone status of an apparent successful offeror on a HUBZone contract must be timely, or it will be dismissed. A protest by a contracting officer or SBA challenging the HUBZone status of an apparent successful offeror on a HUBZone contract or of an awardee on a HUBZone contract is always timely.

* * * * *

■ 77. Amend § 126.803 by:
■ a. Revising paragraph (a);
■ b. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f), respectively;
■ c. Adding new paragraph (c); and
■ d. Revising newly redesignated paragraph (f)(3).

The revisions and additions read as follows:

§ 126.803 How will SBA process a HUBZone status protest and what are the possible outcomes?

(a) *Date at which eligibility determined.* (1) For competitively awarded HUBZone contracts, SBA will determine the eligibility of a concern subject to a HUBZone status protest as of the date of its initial offer that includes price.

(2) For sole source HUBZone contracts, SBA will determine the eligibility of a concern subject to a HUBZone status protest as of the date of the award or intended award.

(3) For protests filed against a HUBZone joint venture alleging that the joint venture does not comply with the requirements in § 126.616, SBA will determine the eligibility of the joint venture as of its final proposal revision for the procurement.

(4) For protests alleging undue reliance on one or more non-HUBZone subcontractors or alleging that such subcontractor(s) will perform the primary and vital requirements of the contract, SBA will determine the HUBZone small business concern's eligibility as of the date of its final proposal revision for the procurement.

(5) For two-step or two-phase procurements, SBA will determine the HUBZone small business concern's eligibility as of the date that it submits its initial bid or proposal (which may or may not include price) during phase one.

* * * * *

(c) *Burden of proof.* In the event of a protest, the burden of proof to demonstrate eligibility is on the protested concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may draw an adverse inference and presume that the information that the concern failed to provide would demonstrate ineligibility and sustain the protest on that basis.

* * * * *

(f) * * *

(3) A concern found to be ineligible may apply for HUBZone certification immediately after its decline if it believes that it has overcome all reasons for ineligibility through changed circumstances and is currently eligible.

■ 78. Amend § 126.900 by:
■ a. Removing the word ''SBCs'' in paragraphs (a) and (b)(1) and adding in its place the phrase ''small business concerns'';
■ b. Removing the word ''SBC'' in paragraphs (a), (b)(2), (b)(3), (d), and (e)(1) and adding in its place the phrase ''small business concern'';
■ c. Removing the word ''SBC'' in the introductory text of paragraph (b) and in paragraph (c);
■ d. Removing the phrase ''agency suspension'' in paragraph (e)(1) and adding in its place the phrase ''procuring agency's suspension'';
■ e. Adding paragraph (e)(4).

The addition reads as follows:

§ 126.900 What are the requirements for representing HUBZone status, and what are the penalties for misrepresentation?

* * * * *

(e) * * *

(4) If SBA discovers that false or misleading information has been knowingly submitted by a small business concern in order to obtain or maintain HUBZone certification, SBA will propose the firm for decertification. In addition, SBA will refer the matter to the SBA Office of Inspector General for review and may recommend that Government-wide debarment or suspension proceedings be initiated.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 79. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

■ 80. Amend § 127.200 by:
■ a. Revising paragraphs (a)(2) and (b)(2);
■ b. Redesignating paragraph (d) as paragraph (f); and
■ c. Adding new paragraphs (d) and (e).

The revisions and additions read as follows:

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) * * *

(2) Not less than 51 percent unconditionally and directly owned and

controlled by one or more economically disadvantaged women who are citizens of and reside in the United States.

(b) * * *

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are citizens of and reside in the United States.

* * * * *

(d) *Size.* In determining whether a concern qualifies as small for WOSB/EDWOSB certification and recertification under the size standard corresponding to a specific NAICS code, SBA will accept the concern's size representation in the System for Award Management (SAM), or successor system, unless there is evidence indicating that the concern is other than small. SBA will request a formal size determination pursuant to § 121.1001(b)(7) of this chapter where any information it possesses calls into question the concern's SAM size representation.

(e) *Federal financial obligations.* A business concern is ineligible to be certified as a WOSB or EDWOSB or to participate in the WOSB program if either the concern or any of its principals has failed to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing. However, a small business concern may be eligible if the concern or the affected principals can demonstrate that they are current on an approved repayment plan, or the financial obligations owed have been settled and discharged/forgiven by the Federal Government.

* * * * *

■ 81. Amend § 127.201 by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

* * * * *

(b) *Unconditional ownership.* To be considered unconditional, ownership must not be subject to any conditions, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity).

(1) The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(2) In determining unconditional ownership, SBA will disregard any unexercised stock options or similar agreements held by qualifying women. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by men or other entities will be treated as exercised, except for any ownership interests which are held by investment companies licensed under 15 U.S.C. 681 *et. seq.*

(3) A right of first refusal granting a man or other entity the contractual right to purchase the ownership interests of the qualifying woman, does not affect the unconditional nature of ownership, if the terms follow normal commercial practices. If those rights are exercised by a man or other entity after certification, the WOSB/EDWOSB must notify SBA. If the exercise of those rights results in qualifying women owning less than 51% of the concern, SBA will initiate decertification pursuant to § 127.405.

* * * * *

(g) *Dividends and distributions.* One or more qualifying women must be entitled to receive:

(1) At least 51 percent of any distribution of profits paid to the owners of a corporation, partnership, or limited liability company concern, and a qualifying woman's ability to share in the profits of the concern must be commensurate with the extent of her ownership interest in that concern;

(2) 100 percent of the value of each share of stock owned by them in the event that the stock is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock or member interest owned in the event of dissolution of the corporation, partnership, or limited liability company.

■ 82. Amend § 127.202 by revising paragraphs (d) and (g) and adding paragraph (h) to read as follows:

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

* * * * *

(d) *Ownership of a partnership.* In the case of a concern which is a partnership, one or more qualifying women, or in the case of an EDWOSB, economically disadvantaged women, must serve as general partners, with control over all partnership decisions. At least 51 percent of every class of partnership interest must be unconditionally owned by one or more qualifying women or economically disadvantaged women. The ownership must be reflected in the concern's partnership agreement.

* * * * *

(g) *Involvement in the concern by other individuals or entities.* Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entities may:

(1) Exercise actual control or have the power to control the concern;

(2) Have business relationships that cause such dependence that the qualifying woman cannot exercise independent business judgment without great economic risk;

(3) Control the concern through loan arrangements (which does not include providing a loan guaranty on commercially reasonable terms);

(4) Provide critical financial or bonding support or a critical license to the concern, which directly or indirectly allows the male or other entity to significantly influence business decisions of the qualifying woman.

(5) Be a former employer, or a principal of a former employer, of any qualifying woman, unless the concern demonstrates that the relationship between the former employer or principal and the qualifying woman does not give the former employer actual control or the potential to control the concern and such relationship is in the best interests of the concern; or

(6) Receive compensation from the concern in any form as a director, officer, or employee, that exceeds the compensation to be received by the qualifying woman who holds the highest officer position (usually Chief Executive Officer or President), unless the concern demonstrates that the compensation to be received by non-qualifying woman is commercially reasonable or that the qualifying woman has elected to take lower compensation to benefit the concern. A certified WOSB or EDWOSB must notify SBA within 30 calendar days if the compensation paid to the highest-ranking officer falls below that paid to a man. In such a case, SBA must determine that that the compensation to be received by the man is commercially reasonable or that the highest-ranking officer has elected to take lower compensation to benefit the WOSB or EDWOSB before SBA may determine that the concern is eligible for a WOSB/EDWOSB award.

(h) *Exception for extraordinary circumstances.* SBA will not find that a lack of control exists where a woman or an economically disadvantaged woman

does not have the unilateral power and authority to make decisions regarding the following extraordinary circumstances:

(1) Adding a new equity stakeholder or increasing the investment amount of an equity stakeholder;

(2) Dissolution of the company;

(3) Sale of the company or all assets of the company;

(4) The merger of the company;

(5) The company declaring bankruptcy;

(6) Amendment of the company's corporate governance documents to remove the shareholder's authority to block any of the actions in paragraphs (h)(1) through (5) of this section; and

(7) Any other extraordinary action that is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

§ 127.301 [Amended]

■ 83. Amend § 127.301 by removing the last sentence.

■ 84. Revise § 127.302 to read as follows:

§ 127.302 Where can a concern apply for certification?

A concern seeking certification as a WOSB or EDWOSB must submit an electronic application to SBA via *https://certifications.sba.gov* or any successor system. The majority woman or economically disadvantaged woman owner must take responsibility for the accuracy of all information submitted on behalf of the applicant.

■ 85. Amend § 127.304 by revising paragraph (d) to read as follows:

§ 127.304 How is an application for certification processed?

* * * * *

(d) An applicant must be eligible as of the date SBA issues a decision. An applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, and any changed circumstances.

* * * * *

■ 86. Revise § 127.305 to read as follows:

§ 127.305 May declined or decertified concerns apply for certification at a later date?

(a) A concern that SBA or a third-party certifier has declined may apply for certification after ninety (90) calendar days from the date of decline if it believes that it has overcome all of the reasons for decline and is currently eligible. A concern that has been declined may seek certification by any of the certification options listed in § 127.300.

(b) A concern that SBA has decertified may apply for certification immediately after the date of decertification, if it believes that it has overcome all reasons for decertification through changed circumstances and is currently eligible.

(c) A concern that voluntarily withdraws from the WOSB program may immediately apply for certification, if it believes that it is currently eligible.

■ 87. Amend § 127.400 by revising paragraph (b) to read as follows:

§ 127.400 How does a concern maintain its WOSB or EDWOSB certification?

* * * * *

(b) The concern must either recertify with SBA or notify SBA that it has completed a program examination from a third party certifier within 90 calendar days of the end of its eligibility period. If a concern fails to so, SBA will decertify the concern at the end of its eligibility period. However, if a concern is able to recertify its eligibility within 30 days of the end of its eligibility period, SBA will reinstate the firm as a certified WOSB or EDWOSB.

Example 1 to paragraph (b). On July 20, 2024, concern B is certified as a WOSB under the WOSB Program by a third-party certifier. Concern B is considered a certified WOSB that is eligible to receive WOSB contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through July 19, 2027. Concern B must request a program examination from SBA or notify SBA that it has completed a program examination from a third-party certifier, by April 21, 2027, to continue participating in the WOSB Program after July 19, 2027.

* * * * *

■ 88. Amend § 127.405 by revising paragraph (d) to read as follows:

§ 127.405 What happens if SBA determines that the concern is no longer eligible for the program?

* * * * *

(d) *Decertification due to submission of false or misleading information.* If SBA discovers that a WOSB or EDWOSB or its representative knowingly submitted false or misleading information, SBA will propose the firm for decertification. In addition, SBA will refer the matter to the SBA Office of Inspector General for review and may recommend that Government-wide debarment or suspension proceedings be initiated.

(1) A firm that is decertified from the WOSB program due to the submission of false or misleading information may be removed from SBA's other small business contracting programs, including the 8(a) Business Development Program, the HUBZone Program, the Veteran Small Business Certification (VetCert) Program, and SBA's Mentor-Protégé Program.

(2) A firm that is decertified or terminated from the 8(a) BD Program, the HUBZone Program, or the VetCert Program due to the submission of false or misleading information may be decertified from the WOSB Program.

(3) SBA may require a firm that is decertified or terminated from the WOSB Program, 8(a) BD Program, the HUBZone Program, or the VetCert Program due to the submission of false or misleading information to enter into an administrative agreement with SBA as a condition of admission or re-admission to the WOSB program.

* * * * *

■ 89. Amend § 127.504 by:

■ a. Revising paragraph (a);

■ b. Removing the words ''under paragraph (f) of this section'' in paragraph (d)(1) and adding in their place the words ''under § 125.12 of this chapter''; and

■ c. Revising paragraph (h).

The revisions read as follows:

§ 127.504 What requirements must an EDWOSB or WOSB meet to be eligible for an EDWOSB or WOSB requirement?

(a) *General.* In order for a concern to submit an offer on a specific EDWOSB or WOSB set-aside requirement, the concern must, at the time of its initial offer that includes price:

(1) Qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract;

(2) Meet the eligibility requirements of an EDWOSB or WOSB in § 127.200; and

(3) Either be a certified EDWOSB or WOSB pursuant to § 127.300, or represent that the concern has submitted a complete application for WOSB or EDWOSB certification to SBA or a third-party certifier and has not received a negative determination regarding that application from SBA or the third party certifier.

(i) If a concern becomes the apparent successful offeror while its application for WOSB or EDWOSB certification is pending, either at SBA or a third-party certifier, the contracting officer for the particular contract must immediately inform SBA's D/GC. SBA will then

prioritize the concern's WOSB or EDWOSB application and make a determination regarding the firm's status as a WOSB or EDWOSB within 15 calendar days from the date that SBA received the contracting officer's notification. Where the application is pending with a third-party certifier, SBA will immediately contact the third-party certifier to require the third-party certifier to complete its determination within 15 calendar days.

(ii) If the contracting officer does not receive an SBA or third-party certifier determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer may presume that the apparently successful offeror is not an eligible WOSB or EDWOSB and may make award accordingly, unless the contracting officer grants an extension to the 15-day response period.

* * * * *

(h) *Recertification.* A prime contractor that receives an award as a certified WOSB or EDWOSB must comply with the recertification requirements set forth in § 125.12 of this chapter regarding its status as a certified WOSB or EDWOSB.

PART 128—VETERAN SMALL BUSINESS CERTIFICATION PROGRAM

■ 90. The authority citation for part 128 continues to read as follows:

Authority: 15 U.S.C. 632(q), 634(b)(6), 644, 645, 657f, 657f–1.

§ 128.100 [Amended]

■ 91. Amend § 128.100 by removing the words ''Veteran Small Business Certification Program'' and adding in their place the words ''Veteran Small Business Certification Program (VetCert)''.

■ 92. Amend § 128.200 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 128.200 What are the requirements a concern must meet to qualify as a VOSB or SDVOSB?

(a) * * *

(2) Not less than 51 percent owned and controlled by one or more veterans who reside in the United States.

(b) * * *

(2) Not less than 51 percent owned and controlled by one or more service-disabled veterans who reside in the United States or, in the case of a veteran with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern, the spouse or permanent caregiver of such veteran who resides in the United States.

* * * * *

■ 93. Amend § 128.201 by revising paragraph (b) to read as follows:

§ 128.201 What other eligibility requirements apply for certification as a VOSB or SDVOSB?

* * * * *

(b) *Federal financial obligations.* A business concern is ineligible to be certified as a VOSB or SDVOSB or to participate in the VetCert program if either the concern or any of its principals has failed to pay significant financial obligations owed to the Federal Government, including unresolved tax liens and defaults on Federal loans or other Federally assisted financing. However, a small business concern may be eligible if the concern or the affected principals can demonstrate that they are current on an approved repayment plan, or the financial obligations owed have been settled and discharged/forgiven by the Federal Government.

■ 94. Amend § 128.202 by
■ a. Revising paragraph (c); and
■ b. In paragraph (g)(1), removing the words ''the annual distribution'' and adding in their place the words ''any distribution''.

The revision reads as follows:

§ 128.202 Who does SBA consider to own a VOSB or SDVOSB?

* * * * *

(c) *Ownership of a partnership.* In the case of a concern which is a partnership, one or more qualifying veterans must serve as general partners, with control over all partnership decisions. At least 51 percent of every class of partnership interest must be unconditionally owned by one or more qualifying veterans. The ownership must be reflected in the concern's partnership agreement.

* * * * *

■ 95. Amend § 128.203 by:
■ a. Removing the second and third sentences in paragraph (f);
■ b. Revising paragraphs (g) and (h);
■ c. Revising paragraph (j)(1);
■ d. Removing the word ''and'' at the end of paragraph (j)(4);
■ e. Removing the punctuation mark ''.'' at the end of paragraph (j)(5) and adding in its place punctuation mark ''; ''; and
■ e. Adding paragraphs (j)(6) and (7).

The revision and addition read as follows:

§ 128.203 Who does SBA consider to control a VOSB or SDVOSB?

* * * * *

(g) *Unexercised rights.* Except as set forth in paragraph (e)(1) of this section, a qualifying veteran's unexercised right to cause a change in the control or management of the concern does not in itself constitute control, regardless of how quickly or easily the right could be exercised.

(h) *Limitations on control by non-qualifying-veterans.* Non-qualifying-veterans may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no non-qualifying veteran may:

(1) Exercise actual control or have the power to control the concern;

(2) Have business relationships that cause such dependence that the qualifying veteran cannot exercise independent business judgment without great economic risk;

(3) Control the concern through loan arrangements (which does not include providing a loan guaranty on commercially reasonable terms);

(4) Provide critical financial or bonding support or a critical license to the concern, which directly or indirectly allows the non-qualifying veteran to significantly influence business decisions of the qualifying veteran.

(5) Be a former employer, or a principal of a former employer, of any qualifying veteran, unless the concern demonstrates that the relationship between the former employer or principal and the qualifying veteran does not give the former employer actual control or the potential to control the concern and such relationship is in the best interests of the concern; or

(6) Receive compensation from the concern in any form as a director, officer, or employee, that exceeds the compensation to be received by the qualifying veteran who holds the highest officer position (usually Chief Executive Officer or President), unless the concern demonstrates that the compensation to be received by non-qualifying veteran is commercially reasonable or that the qualifying veteran has elected to take lower compensation to benefit the concern. A certified SDVOSB must notify SBA within 30 calendar days if the compensation paid to the highest-ranking officer falls below that paid to a non-qualifying veteran. In such a case, SBA must determine that that the compensation to be received by the non-qualifying veteran is commercially reasonable or that the highest-ranking officer has elected to take lower compensation to benefit the SDVOSB before SBA may determine that the concern is eligible for a SDVOSB award.

* * * * *

(j) * * *

(1) Adding a new equity stakeholder or increasing the investment amount of an equity stakeholder;

* * * * *

(6) Amendment of the company's corporate governance documents to remove the shareholder's authority to block any of the actions in paragraphs (j)(1) through (5) of this section; and

(7) Any other extraordinary action that is crafted solely to protect the investment of the minority shareholders, and not to impede the majority's ability to control the concern's operations or to conduct the concern's business as it chooses.

* * * * *

■ 96. Amend § 128.204 by revising paragraph (a) to read as follows:

§ 128.204 What size standards apply to VOSBs and SDVOSBs?

(a) *Time of certification.* At the time of certification or recertification, a VOSB or SDVOSB must be a small business under the size standard corresponding to any NAICS code listed in its System for Award Management (SAM), or successor system, profile. In determining whether a concern qualifies as small for VOSB/SDVOSB certification or recertification under the size standard corresponding to a specific NAICS code, SBA will accept the concern's size representation in SAM, unless there is evidence indicating that the concern is other than small. SBA will request a formal size determination pursuant to § 121.1001(b)(12) of this chapter where any information it possesses calls into question the concern's SAM size representation.

* * * * *

■ 97. Revise § 128.301 to read as follows:

§ 128.301 Where must an application be filed?

An application for certification as a VOSB or SDVOSB must be electronically filed according to the instructions on SBA's website at *www.sba.gov*. The qualifying veteran must take responsibility for the accuracy of all information submitted on behalf of the applicant.

■ 98. Amend § 128.302 by:

■ a. Adding a sentence to the end of paragraph (a); and

■ b. Removing from the introductory text to paragraph (d) the phrase ''any independent research conducted by SBA,''.

The addition reads as follows:

§ 128.302 How does SBA process applications for certification?

(a) * * * An applicant must be eligible as of the date SBA issues a decision.

* * * * *

■ 99. Revise § 128.305 to read as follows:

§ 128.305 May declined or decertified concerns apply for recertification at a later date?

(a) A concern that SBA has declined may apply for certification after ninety (90) calendar days from the date of decline, if it believes that it has overcome all of the reasons for decline and is currently eligible.

(b) A concern that SBA has decertified may apply for certification immediately after the date of decertification, if it believes that it has overcome all reasons for decertification through changed circumstances and is currently eligible.

(c) A concern that voluntarily withdraws from the VetCert program may immediately apply for certification, if it believes that it is currently eligible.

■ 100. Amend § 128.306 by revising paragraph (a) to read as follows:

§ 128.306 How does a concern maintain its VOSB or SDVOSB certification?

(a) Any Participant seeking to remain certified must recertify its eligibility every 3 years. There is no limitation on the number of times a business may recertify. Participants may recertify within 90 calendar days prior to the termination of their eligibility period. If a concern fails to recertify, SBA will decertify the concern at the end of its eligibility period. However, if a concern is able to recertify its eligibility within 30 days of the end of its eligibility period, SBA will reinstate the concern as a certified VOSB or SDVOSB.

* * * * *

§ 128.309 [Amended]

■ 101. Amend § 128.309 by removing the third and fourth sentences of paragraph (a), the second and third sentences of paragraph (b), and the second and third sentences of paragraph (c).

■ 102. Amend § 128.310 by revising paragraph (d) to read as follows:

§ 128.310 What are the procedures for decertification?

* * * * *

(d) *Decertification based on false or misleading information.* (1) If SBA discovers that a VOSB/SDVOSB or its representative knowingly submitted false or misleading information, SBA will propose the firm for decertification. In addition, SBA will refer the matter to the SBA Office of Inspector General for review and may recommend that Government-wide debarment or suspension proceedings be initiated.

(2) A firm that is decertified from the VetCert Program due to the submission of false or misleading information may be removed from SBA's other small business contracting programs, including the 8(a) Business Development Program, the HUBZone Program, the Women-Owned Small Business (WOSB) Program, and SBA's Mentor-Protégé Program.

(3) A firm that is decertified or terminated from the 8(a) BD Program, the HUBZone Program, or the WOSB Program due to the submission of false or misleading information may be decertified from the VetCert Program.

(4) SBA may require a firm that is decertified or terminated from the VetCert Program, the 8(a) BD Program, the HUBZone Program, or the WOSB Program due to the submission of false or misleading information to enter into an administrative agreement with SBA as a condition of admission or re-admission to the VetCert program.

* * * * *

■ 103. Amend § 128.401 by:

■ a. Revising paragraph (a);

■ b. In paragraph (d)(1)(i) removing the words ''under paragraph (e) of this section'' and adding in their place the words ''under § 125.12 of this chapter''; and

■ c. Revising paragraph (e).

The revisions read as follows:

§ 128.401 What requirements must a VOSB or SDVOSB meet to submit an offer on a contract?

(a) *Certification requirement.* Only certified VOSBs and SDVOSBs are eligible to submit an offer on a specific VOSB or SDVOSB requirement. For a competitively awarded VOSB/SDVOSB contract, order, or agreement, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract, order or agreement, and be a certified VOSB or SDVOSB and meet the eligibility requirements of a VOSB or SDVOSB in § 128.200 at the time of initial offer or response which includes price. For any sole source VOSB or SDVOSB award, the concern must qualify as a small business concern under the size standard corresponding to the applicable NAICS code and be a certified VOSB or SDVOSB and meet the eligibility requirements of a VOSB or SDVOSB in § 128.200 on the date of award.

* * * * *

(e) *Recertification.* A prime contractor that receives an award as a certified SDVOSB must comply with the recertification requirements set forth in § 125.12 of this chapter regarding its status as a certified SDVOSB.

* * * * *

■ 104. Amend § 128.402 by revising the second sentence of the introductory text of paragraph (a) and adding paragraph (k) to read as follows:

§ 128.402 When may a joint venture submit an offer on a VOSB or SDVOSB contract?

(a) * * * SBA does not certify VOSB or SDVOSB joint ventures, but the joint venture should be designated as a VOSB or SDVOSB joint venture in SAM with the VOSB or SDVOSB-certified joint venture partner identified. * * *

* * * * *

(k) *Non-VOSB/SDVOSB contracts.* On a non-VOSB/SDVOSB contract, for an award to a joint venture to be considered awarded to a VOSB or SDVOSB (*i.e.,* for a procuring agency to receive VOSB or SDVOSB credit for goaling purposes), the joint venture awardee must comply with the requirements of this section and § 125.8.

§ 128.500 [Amended]

■ 105. Amend § 128.500 by removing the text ''128.402(c)'' in paragraph (c) and adding in its place ''128.402''.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 106. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 15 U.S.C. 657f.

Subpart K issued under 15 U.S.C. 657f.

Subpart L issued under 15 U.S.C. 636(a)(36); Pub. L. 116–136, 134 Stat. 281; Pub. L. 116–139, 134 Stat. 620; Pub. L. 116–142, 134 Stat. 641; and Pub. L. 116–147, 134 Stat. 660.

Subpart M issued under 15 U.S.C. 657a; Pub. L. 117–81, 135 Stat. 1541.

■ 107. Amend § 134.1003 by revising the first sentence of paragraph (e)(1) to read as follows:

§ 134.1003 Grounds for filing a VOSB or SDVOSB status protest.

* * * * *

(e) * * *

(1) If the VOSB or SDVOSB status protest pertains to a procurement, the Judge will determine a protested concern's eligibility as a VOSB or SDVOSB as of the date of its initial offer or response which includes price for a competitively awarded VOSB/SDVOSB contract, order, or agreement, and as of the date of award for any sole source VOSB or SDVOSB award. * * *

* * * * *

§ 134.1104 [Amended]

■ 108. Amend § 134.1104 by removing the words ''10 business days'' in paragraph (a) and adding in their place the words ''45 business days''.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2024–29393 Filed 12–16–24; 8:45 am]

BILLING CODE 8026–09–P

FEDERAL REGISTER

Vol. 89 Tuesday,

No. 242 December 17, 2024

Part VII

Department of Health and Human Services

45 CFR Part 171

Health Data, Technology, and Interoperability: Protecting Care Access; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 171

RIN 0955–AA06

Health Data, Technology, and Interoperability: Protecting Care Access

AGENCY: Assistant Secretary for Technology Policy/Office of the National Coordinator for Health Information Technology, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule has finalized certain proposals from the Health Data, Technology, and Interoperability: Patient Engagement, Information Sharing, and Public Health Interoperability Proposed Rule (HTI–2 Proposed Rule) and in doing so supports the access, exchange, and use of electronic health information. Specifically, this final rule amends the information blocking regulations to revise two existing information blocking exceptions and establish an additional reasonable and necessary activity that does not constitute information blocking referred to as the Protecting Care Access Exception.

DATES: This final rule is effective on December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Kate Tipping, Office of Policy, Assistant Secretary for Technology Policy (ASTP)/Office of the National Coordinator for Health Information Technology, 202–690–7151.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Purpose of Regulatory Action
B. Summary of Information Blocking Enhancements
C. Costs and Benefits
II. Background
A. Statutory Basis
B. Regulatory History
III. Information Blocking Enhancements
A. Out of Scope Comments
B. Exceptions
1. Privacy Exception Updates
a. Privacy Exception—Definition of Individual
b. Privacy Sub-exception—Individual's Request Not To Share EHI
2. Infeasibility Exception Updates
3. New Protecting Care Access Exception
a. Background and Purpose
b. Threshold Condition and Structure of Exception
c. Patient Protection Condition
d. Care Access Condition
e. Presumption Provision and Definition of ''Legal Action''
IV. Severability
V. Waiver of Delay in Effective Date
VI. Regulatory Impact Analysis
A. Statement of Need
B. Alternatives Considered
C. Overall Impact—
1. Executive Orders 12866 and 13563—Regulatory Planning and Review Analysis
D. Regulatory Flexibility Act
E. Executive Order 13132—Federalism
F. Unfunded Mandates Reform Act of 1995

I. Executive Summary

A. Purpose of Regulatory Action

The Secretary of Health and Human Services has delegated responsibility to the Assistant Secretary for Technology Policy and Office of the National Coordinator for Health Information Technology (hereafter ASTP/ONC) [1] to identify reasonable and necessary activities that do not constitute information blocking.[2] This final rule fulfills this responsibility; advances equity and innovation; and supports the access to, and exchange and use of, electronic health information (EHI).

The final rule is also consistent with Executive Order (E.O.) 14036. E.O. 14036, Promoting Competition in the American Economy,[3] issued on July 9, 2021, established a whole-of-government effort to promote competition in the American economy and reaffirmed the policy stated in E.O. 13725 of April 15, 2016 (Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy).[4] In this rule, we have finalized enhancements to support information sharing under the information blocking regulations and promote innovation and competition, while ensuring patients' privacy and access to care remain protected.

Addressing information blocking is critical for promoting innovation and competition in health IT and for the delivery of health care services to individuals, as discussed in both the March 4, 2019, proposed rule, ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' (84 FR 7508 and 7523) (ONC Cures Act Proposed Rule) and the May 1, 2020 final rule, ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' (85 FR 25790 and 25791) (ONC Cures Act Final Rule), and reiterated in the January 9, 2024 final rule, ''Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing'' (89 FR 1195) (HTI–1 Final Rule). Specifically, we described (84 FR 7508 and 85 FR 25791) how the information blocking provision (section 3022 of the Public Health Service Act (PHSA) (42 U.S.C. 300jj–52)) provides a comprehensive response to the issues identified by empirical and economic research that suggested that information blocking may weaken competition, encourage consolidation, and create barriers to entry for developers of new and innovative applications and technologies that enable more effective uses of EHI to improve population health and the patient experience.[5] As we explained in the ONC Cures Act Final Rule, the PHSA information blocking provision itself expressly addresses practices that impede innovation and advancements in EHI access, exchange, and use, including care delivery enabled by health IT (85 FR 25820, citing section 3022(a)(2) of the PHSA). Actors subject to the information blocking provisions may, among other practices, attempt to exploit their control over interoperability elements to create barriers to entry for competing technologies and services that offer greater value for health IT customers

[1] The Office of the National Coordinator for Health Information Technology (ONC) was the previous name of this office. See **Federal Register**: Statement of Organization, Functions, and Delegations of Authority; Office of The National Coordinator for Health Information Technology *(89 FR 60903, July 29. 2024).*

[2] Reasonable and necessary activities that do not constitute information blocking, also known as information blocking exceptions, are identified in 45 CFR part 171, subparts B, C and D. ASTP/ONC's official website, HealthIT.gov, offers a variety of resources on the topic of Information Blocking, including fact sheets, recorded webinars, and frequently asked questions. To learn more, please visit: *https://www.healthit.gov/topic/information-blocking/.*

[3] Executive Order 14036: Promoting Competition in the American Economy, Jul 9, 2021 (86 FR 36987).

[4] Executive Order 13725: Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy, Apr 15, 2016 (81 FR 23417)

[5] *See, e.g.,* Martin Gaynor, Farzad Mostashari, and Paul B. Ginsberg, Making Health Care Markets Work: Competition Policy for Health Care, *JAMA,* 317(13) 1313–1314 (Apr. 2017); Diego A. Martinez et al., A Strategic Gaming Model for Health Information Exchange Markets, *Health Care Mgmt. Science* 21, 119–130 (Sept. 2016); (''[S]ome healthcare provider entities may be interfering with HIE across disparate and unaffiliated providers to gain market advantage.''); Niam Yaraghi, A Sustainable Business Model for Health Information Exchange Platforms: The Solution to Interoperability in Healthcare IT (2015), available at *https://www.brookings.edu/articles/a-sustainable-business-model-for-health-information-exchange-platforms-the-solution-to-interoperability-in-health-care-it/;* Thomas C. Tsai Ashish K. Jha, Hospital Consolidation, Competition, and Quality: Is Bigger Necessarily Better? 312 JAMA 312(1), 29030 (Jul 2014).

and users, provide new or improved capabilities, and enable more robust access, exchange, and use of EHI (85 FR 25820).[6] Information blocking may also harm competition not just in health IT markets, but also in markets for health care services (85 FR 25820). In the ONC Cures Act Final Rule, we described practices that dominant market providers may leverage and use to control access and use of their technology, resulting in technological dependence and possibly leading to barriers to entry by would-be competitors, as well as making some market providers vulnerable to acquisition or inducement into arrangements that enhance the market power of incumbent providers to the detriment of consumers and purchasers of health care services (85 FR 25820). The revisions to the information blocking regulations, including the addition of the new exception finalized in this final rule, will continue to promote innovation and support the lawful access, exchange, and use of EHI, while strengthening support for individuals' privacy and EHI sharing preferences.

B. Summary of Information Blocking Enhancements

We received approximately 270 comment submissions on the broad range of proposals included in the ''Health Data, Technology, and Interoperability: Patient Engagement, Information Sharing, and Public Health Interoperability'' proposed rule (89 FR 63498) (HTI–2 Proposed Rule). We thank all commenters for their thoughtful input. For the purposes of this final rule, we have reviewed and responded to comments on a narrowed set of proposals. Specifically, we summarize and respond to comments related to the proposals finalized in this rule (described below). Comments received in response to other proposals from the HTI–2 Proposed Rule are beyond the scope of this final rule, have been addressed in the ''Health Data, Technology, and Interoperability: Trusted Exchange Framework and Common Agreement (TEFCA™)'' final rule (RIN 0955–AA07) (HTI–2 Final Rule) or are still being reviewed and considered. Comments related to proposals not discussed in this final rule or the HTI–2 Final Rule may be the subject of subsequent final rules related to such proposals in the future.

On July 25, 2024, HHS announced a reorganization that, among other things, renamed the Office of the National Coordinator for Health Information Technology (ONC). ONC is now dually titled as the Assistant Secretary for Technology Policy and Office of the National Coordinator for Health Information Technology (ASTP/ONC) per the **Federal Register** notice that appeared in the **Federal Register** on July 29, 2024.[7] It was not until days after the HTI–2 Proposed Rule's content had been released to the public (on July 10, 2024) [8] that the name change was announced. Therefore, when the HTI–2 Proposed Rule appeared in the **Federal Register** on August 5, 2024, it retained reference to the office as ''ONC.'' We continue to refer to ''ONC'' when referencing the HTI–2 Proposed Rule in this final rule. However, in the comment summaries and responses of this final rule, we have revised and replaced ''ONC'' references with ''ASTP/ONC.''

In this final rule, we have finalized the addition of a definition of ''reproductive health care'' to the defined terms for purposes of the information blocking regulations, which appear in 45 CFR 171.102. We have finalized select proposed revisions (proposed in the HTI–2 Proposed Rule at 89 FR 63620 through 63627 and 89 FR 63803) for two existing information blocking exceptions (Privacy Exception and Infeasibility Exception) in subpart B of 45 CFR part 171. Finally, we have finalized a new information blocking exception (Protecting Care Access) in subpart B of part 171.

C. Costs and Benefits

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 14094 (Modernizing Regulatory Review) (hereinafter, the Modernizing E.O.) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action.'' The Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is a significant regulatory action under section 3(f) of Executive Order 12866 as amended by E.O. 14094.

II. Background

A. Statutory Basis

The Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), was enacted on February 17, 2009. The HITECH Act added to the Public Health Service Act (PHSA) ''Title XXX—Health Information Technology and Quality'' (Title XXX) to improve health care quality, safety, and efficiency through the promotion of health IT and EHI exchange.

The 21st Century Cures Act (Pub. L. 114–255) (Cures Act) was enacted on December 13, 2016, to accelerate the discovery, development, and delivery of 21st century cures, and for other purposes. The Cures Act, through Title IV—Delivery, amended Title XXX of the PHSA by modifying or adding certain provisions to the PHSA relating to health IT.

Information Blocking Under the 21st Century Cures Act

Section 4004 of the Cures Act added section 3022 of the Public Health Service Act (PHSA) (42 U.S.C. 300jj-52, ''the information blocking provision''). Section 3022(a)(1) of the PHSA defines practices that constitute information blocking when engaged in by a health care provider, or a health information technology developer, exchange, or network. Section 3022(a)(3) authorizes the Secretary to identify, through notice and comment rulemaking, reasonable and necessary activities that do not constitute information blocking for purposes of the definition set forth in section 3022(a)(1).

B. Regulatory History

On March 4, 2019, the ONC Cures Act Proposed Rule was published in the **Federal Register** (84 FR 7424). The proposed rule proposed to implement certain provisions of the Cures Act that would advance interoperability and support the access, exchange, and use of electronic health information.

On May 1, 2020, the ONC Cures Act Final Rule was published in the **Federal Register** (85 FR 25642). The final rule implemented certain provisions of the Cures Act, including Conditions and Maintenance of Certification requirements for health IT developers

[6] *See also* Martin Gaynor, Farzad Mostashari, and Paul B. Ginsberg, Making Health Care Markets Work: Competition Policy for Health Care, *JAMA,* 317(13) 1313–1314 (Apr. 2017).

[7] Statement of Organization, Functions, and Delegations of Authority; Office of The National Coordinator for Health Information Technology *(89 FR 60903).*

[8] *https://www.hhs.gov/about/news/2024/07/10/hhs-proposes-hti-2-rule-improve-patient-engagement-information-sharing-public-health-interoperability.html.*

and the voluntary certification of health IT for use by pediatric health providers, and identified reasonable and necessary activities that do not constitute information blocking. The final rule also implemented certain parts of the Cures Act to support patients' access to their EHI. Additionally, the ONC Cures Act Final Rule modified the 2015 Edition health IT certification criteria and ONC Health IT Certification Program (Program) in other ways to advance interoperability, enhance health IT certification, and reduce burden and costs, as well as to improve patient and health care provider access to EHI and promote competition. On November 4, 2020, the Secretary published an interim final rule with comment period titled ''Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID–19 Public Health Emergency'' (85 FR 70064) (Cures Act Interim Final Rule). The interim final rule extended certain compliance dates and timeframes adopted in the ONC Cures Act Final Rule to offer the health care system additional flexibilities in furnishing services to combat the COVID–19 pandemic, including extending the applicability date for information blocking provisions to April 5, 2021.

On April 18, 2023, a proposed rule titled, ''Health Data, Technology, and Interoperability: Certification Program Updates, Algorithm Transparency, and Information Sharing'' (88 FR 23746) (HTI–1 Proposed Rule) was published in the **Federal Register**. The HTI–1 Proposed Rule proposed to implement the Electronic Health Record (EHR) Reporting Program provision of the Cures Act by establishing new Conditions and Maintenance of Certification requirements for health IT developers under the Program. The HTI–1 Proposed Rule also proposed to make several updates to certification criteria and implementation specifications recognized by the Program, including revised certification criteria for: ''clinical decision support'' (CDS), ''patient demographics and observations'', and ''electronic case reporting.'' The HTI–1 Proposed Rule also proposed to establish a new baseline version of the United States Core Data for Interoperability (USCDI). Additionally, the HTI–1 Proposed Rule proposed enhancements to support information sharing under the information blocking regulations.

On January 9, 2024, the HTI–1 Final Rule was published in the **Federal Register**, which implemented the EHR Reporting Program provision of the 21st Century Cures Act and established new Conditions and Maintenance of Certification requirements for health IT developers under the Program (89 FR 1192). The HTI–1 Final Rule also made several updates to certification criteria and standards recognized by the Program. The HTI–1 Final Rule provided enhancements to support information sharing under the information blocking regulations, including clarifying certain definitions and establishing a new ''TEFCA Manner'' Exception—which provides that an actor's practice of not fulfilling a request to access, exchange, or use EHI in any alternative manner besides via TEFCA will not be considered information blocking when the practice follows certain conditions (*see* 45 CFR 171.403 and 89 FR 1387 through 1394). Through these provisions, we sought to advance interoperability, improve algorithm transparency, and support the access, exchange, and use of EHI. The HTI–1 Final Rule also updated numerous technical standards in the Program in additional ways to advance interoperability, enhance health IT certification, and reduce burden and costs for health IT developers and users of health IT.

On August 5, 2024, the HTI–2 Proposed Rule was published in the **Federal Register** (89 FR 63498). The HTI–2 Proposed Rule is the second of the Health Data, Technology, and Interoperability rules that seek to advance interoperability, improve transparency, and support the access, exchange, and use of electronic health information. The HTI–2 Proposed Rule included proposals for: standards adoption; adoption of certification criteria to advance public health data exchange; expanded uses of certified application programming interfaces, such as for electronic prior authorization, patient access, care management, and care coordination; and information sharing under the information blocking regulations. Additionally, the HTI–2 Proposed Rule proposed to establish a new baseline version of the USCDI standard and proposed to update the ONC Health IT Certification Program to enhance interoperability and optimize certification processes to reduce burden and costs. The HTI–2 Proposed Rule also proposed to implement certain provisions related to TEFCA, which would support reliability, privacy, security, and trust within TEFCA. In the HTI–2 Final Rule (RIN 0955–AA07), we codified definitions of certain TEFCA terms in § 171.401 of the information blocking regulations and finalized the 45 CFR part 172 TEFCA provisions.

III. Information Blocking Enhancements

In the HTI–2 Proposed Rule, we proposed revisions to defined terms for purposes of the information blocking regulations, which appear in 45 CFR 171.102. Specifically, we proposed to clarify the definition of ''health care provider'' (89 FR 63616, 63617, and 63802) and adopt definitions for three terms not previously included in § 171.102: ''business day'' (89 FR 63601, 63602, 63626, and 63802), ''health information technology or health IT'' (89 FR 63617 and 63802), and ''reproductive health care'' (89 FR 63633 and 63802). Of these, we address in this final rule only the proposal to add to § 171.102 a definition of ''reproductive health care'' and comments received in response to that proposal. Comments received specific to other proposed revisions to § 171.102 are beyond the scope of this final rule but may be the subject(s) of a different final rule or rules related to such proposal(s).

We proposed to revise two existing exceptions in subpart B of 45 CFR part 171 (§ 171.202 and § 171.204) and solicited comment on potential revisions to one exception in subpart D (§ 171.403). We proposed revisions to paragraphs (a), (d), and (e) of § 171.202 (89 FR 63620 through 63622, and 63803) and to paragraphs (a)(2), (a)(3) and (b) of § 171.204 (89 FR 63622 through 63628, and 63803). In this final rule, we address comments received on or relevant to proposed revisions to paragraphs (a) and (e) of § 171.202 and paragraph (a)(2) of § 171.204. Comments received specific to proposed revisions to § 171.202(d), § 171.204(a)(3), and § 171.204(b) are beyond the scope of this final rule but may be the subject(s) of a future final rule related to such proposal(s).

We proposed two new exceptions, the Protecting Care Access Exception and the Requestor Preferences Exception, in subparts B and C of part 171 respectively. The Protecting Care Access Exception was proposed as new § 171.206 (89 FR 63627 through 63639, and 63804). We have finalized the proposed Protecting Care Access Exception (§ 171.206), and we address comments relevant to it in this final rule. Comments received specific to the Requestor Preferences Exception (§ 171.304) proposal (89 FR 63639 through 63642, 63804 and 63805) are beyond the scope of this final rule but may be a subject of a future final rule related to that proposal.

We proposed to codify in § 171.401 definitions of certain terms relevant to the Trusted Exchange Framework and

Common Agreement™ (TEFCA™) (89 FR 63642, 63804, and 63805) and in § 171.104 descriptions of certain practices that constitute interference with the access, exchange, and use of electronic health information (EHI) (89 FR 63617 through 63620, 63802, and 63803). We do not address either of those proposals in this final rule, and comments regarding them are also beyond the scope of this final rule. However, in the HTI–2 Final Rule (RIN 0955–AA07), we finalized the proposed definitions of certain terms relevant to TEFCA™ in § 171.401.

A. Out of Scope Comments

In addition to comments received on proposals that we included in the HTI–2 Proposed Rule, we received numerous comments that were beyond the scope of any proposal in the HTI–2 Proposed Rule. For example, we received comments recommending that ASTP/ONC revise an information blocking exception to which we had not proposed any revisions. We also received comments recommending that we adopt new requirements for actors' conduct or technology regarding which we did not make any related proposals in the HTI–2 Proposed Rule. While we do not specifically address in this final rule all comments received on matters beyond the scope of the HTI–2 Proposed Rule, nor do we intend to address them all in any other final rule, we do address some of them (below) prior to more in-depth discussions of comments received that are specifically related to proposals addressed in this final rule.

Comment. One commenter expressed support for greater transparency and timely access to health information for patients. However, they stated that the regulations as they exist today do not appropriately mitigate patient harm within the ''Preventing Harm Exception.'' They stated a belief that the Preventing Harm Exception does not account for the harm caused by immediate patient access to distressing or confusing laboratory test or imaging results. They stated a belief that ''the strict definition outlined by ONC does not include emotional harm.'' The commenter stated that certain scenarios require particularly sensitive care conversations, where patients are able to process the results with an experienced health care professional. Therefore, they urged that we clarify that the Preventing Harm Exception includes emotional distress.

Response. We thank the commenter for their feedback. As discussed in context of finalized revisions to the *segmentation* condition of the Infeasibility Exception (§ 171.204(a)(2)), this rule retains application of the Infeasibility Exception in circumstances where an actor cannot unambiguously segment EHI they have chosen to withhold consistent with the Preventing Harm Exception (§ 171.201) from other EHI that they could share under applicable law. Any modification to the Preventing Harm Exception or other revision to 45 CFR part 171 to create a regulatory exception designed to cover situations where a health care provider may want to limit a patient's own access to their health information based on concern about the information being upsetting or confusing the patient is beyond the scope of this final rule. We did not propose in the HTI–2 Proposed Rule any changes to the Preventing Harm Exception. The revisions we did propose to the Infeasibility Exception or Privacy Exception, or establishment of the new Protecting Care Access Exception, finalized in this rule do not change or conflict with any condition of the Preventing Harm Exception in § 171.201. We emphasize that the Preventing Harm Exception and the Protecting Care Access Exception operate independently of one another and of all other exceptions. An actor's practice does not need to satisfy any portion of any other exception in order to satisfy the Preventing Harm Exception. Likewise, an actor's practice need not satisfy any portion of any other exception to satisfy the Protecting Care Access Exception. We refer readers to the discussion in the HTI–1 Final Rule of how ''stacking'' of exceptions may be relevant because an actor wishes to engage in one or more practice(s) that are covered in part, but not fully covered, solely by the Privacy Exception (§ 171.202) or solely by the Preventing Harm Exception (§ 171.201) (89 FR 1352 through 1354). As we noted and emphasized in the HTI–1 Final Rule (89 FR 1354), the example detailed in that discussion was an example scenario where an individual has requested restrictions that the actor has chosen to honor, but there may be a wide variety of scenarios where ''stacking'' other combinations of various exceptions with one another, or with restrictions on use or disclosure of EHI under applicable law, may occur. The Protecting Care Access Exception finalized in this rule may be combined (or ''stacked'') with the Infeasibility Exception when both are applicable. Later in this final rule, we discuss the revised *segmentation* condition of the Infeasibility Exception and when it may be applicable in complement to another exception under which an actor may have chosen to withhold a portion of the EHI the actor would be permitted by applicable law to make available to a requestor for permissible purposes.

Specific to this commenter's concerns about allowing patients to access EHI before it has been explained to them or with limited context, we recognize that patients have different degrees of health literacy as well as different individual preferences for when and how to receive information that may be upsetting. We are aware that some patients may experience emotional distress from accessing new information about their health without additional context or explanation of what the information means for their health or care. We also recognize that many clinical situations are too nuanced to provide the context a patient needs through means other than a conversation with a health care professional. However, as we noted in the ONC Cures Act Final Rule (*85 FR 25824 and 25825*), it would be challenging to define an appropriate and unique standard for purposes of the Preventing Harm Exception for non-physical harms that all actors, as defined in § 171.102, could apply consistently and, most importantly, without unduly restricting patients' rights to access their health information. We may consider exploring options to address such concerns in future rulemaking, but we note that we would not interpret anything in 45 CFR part 171 as compelling a patient to review information before the patient is ready.

To ensure that this discussion does not introduce confusion about the applicability of the Preventing Harm Exception (§ 171.201),[9] we remind readers that the Preventing Harm Exception relies on the same types of harm that apply for a covered entity to deny access to protected health information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.[10] For example, in situations where a patient's representative is accessing the patient's EHI (such as a parent accessing EHI of their minor child), the Preventing Harm Exception relies on the same

[9] For the Preventing Harm Exception to cover an actor's practice likely to interfere with access, exchange, or use of EHI (by the patient or by anyone else who may, under applicable law, access, exchange, or use the patient's EHI for permissible purposes), the actor's practice must meet the applicable conditions of the exception at all relevant times. We refer readers to 45 CFR 171.201 for the full conditions of the Preventing Harm Exception, and those seeking additional information about those conditions to their preamble discussion in the ONC Cures Act Final Rule (85 FR 25821 to 25844).

[10] 45 CFR part 160 and subparts A and E of 45 CFR part 164.

''substantial harm'' standard that applies under the HIPAA Privacy Rule to a HIPAA covered entity's denial of a personal representative's access of an individual's PHI on ''reviewable grounds'' (see 45 CFR 164.524(a)(3)(iii)).[11] ''Substantial harm'' includes ''substantial physical, emotional, or psychological harm'' (see, for example, HIPAA Privacy Rule preamble at 65 FR 82556). We have published an illustrative chart of the patient access cases where the Preventing Harm Exception recognizes ''substantial harm,'' in a frequently asked question (IB.FAQ42.1.2022FEB) that is available at: *https://www.healthit.gov/faq/which-patient-access-cases-does-preventing-harm-exception-recognize-substantial-harm.*[12]

Comment. One commenter noted that information blocking could seriously harm the free market and the health care services market if left unchecked. The commenter expressed that the information blocking provisions set the country up for the future by promoting innovation, while simultaneously ensuring lawful access, exchange, and use of electronic health information. The commenter noted that the inclusion of information blocking provisions ensures that barriers to entry are not created for competing technologies, allowing for competition and unhindered development of improved technologies.

Response. We agree with and appreciate the commenter's feedback.

Comments. Multiple commenters requested clarification or sought additional education on a variety of topics related to information blocking or to information sharing. One commenter sought guidance on how to understand information blocking concepts and relationships between concepts. They suggested that we provide decision trees, relationship diagrams, or possibly supplemental educational materials. A commenter requested a concerted effort by key HHS entities, including the Office for Civil Rights (OCR) and ASTP/ONC, to bolster patient and provider community education about the HIPAA Privacy Rule, its updates, and related information blocking exceptions. This commenter emphasized the importance of patient understanding in assuring data sharing consent is true, informed consent. The commenter encouraged us to continue investing in the education of individuals whose data is exchanged in support of patient and population health goals, especially as data sharing becomes more widespread under TEFCA and other frameworks.

Another commenter urged that we place a special emphasis on educating consumers and other parties about limitations in the ability for long-term and post-acute care (LTPAC) providers to furnish some information electronically due to current standards limitations. This commenter expressed concerns regarding legitimate circumstances where certain patient health information from LTPAC providers is not currently feasible to be exchanged via a portal or third-party app and how this could potentially result in a high volume of avoidable consumer information blocking complaints and investigations directed at LTPAC providers. Another commenter expressed that it is important to promote interoperability and exchange between LTPAC providers and the EHRs of patients' doctors.

Response. We thank commenters for requesting these clarifications. We note that we have offered information sessions and published sub-regulatory guidance documents, fact sheets, and frequently asked questions to provide supplemental information about the information blocking regulations.

We agree that it is important to educate patients about data sharing and its implications. However, discussion of specific additional investment in educational initiatives, as one commenter suggested, is beyond the scope of this final rule. Similarly, we recognize the importance of educating consumers about the limitations of EHI exchange, including particular care and practice settings (such as LTPAC) where the functionalities supported by currently deployed health IT may be more variable than in other settings (such as acute-care hospitals or physician practices). However, providing such education is not in scope for this final rule and would be more effective, we believe, in different contexts than this final rule. We refer readers seeking resources and information for LTPAC providers to advance their adoption and use of interoperable health IT and health information exchange to support care coordination and outcomes to ASTP/ONC's official website, HealthIT.gov. We offer a range of resources for health care providers across a broad array of care settings online, free of charge. (Start at *https://www.healthit.gov/topic/health-it-health-care-settings/health-it-health-care-settings*). For example, we offer an educational module for LTPAC providers [13] and our Health IT Playbook (*https://www.healthit.gov/playbook/*) has implementation resources for LTPAC providers.[14] From an information-blocking perspective, information resources currently available at *https://www.healthit.gov/informationblocking* are relevant to actors, including LTPAC and other health care providers.[15] We will continue to look for ways to engage and educate the health IT community, including patients, about our regulations.

Comment. One commenter suggested requiring exam room laptops to be locked after every patient. They expressed concerns about patient record visibility between visits, noting that physicians should be required to enter their passwords to access the information when they enter the room.

Response. Although the concern raised by this comment is beyond the scope of the HTI–2 Proposed Rule, we thank the commenter for their feedback. We strive to promote and recommend best practices for securing EHI. Additional privacy and security information, resources, and tools for both consumers and health care providers are available through ASTP/ONC's official website, HealthIT.gov.[16]

B. Exceptions

1. Privacy Exception Updates

a. Privacy Exception—Definition of Individual

For purposes of the Privacy Exception, the term ''individual'' is defined in § 171.202(a)(2). When the Privacy Exception in § 171.202 and paragraph (a)(2) were initially established by the ONC Cures Act Final Rule, the codified text included a typographical error that was not identified until after publication. In the ONC Cures Act Final Rule (at 85 FR 25957) and the current Code of Federal Regulations, the text of § 171.202(a)(2)(iii), (iv), and (v) cross-

[11] The ''substantial harm'' standard also applies to denial of access to PHI that references another person (other than a health care provider), see 45 CFR 164.524(a)(3)(ii).

[12] This FAQ can also be found, alongside others about the Preventing Harm Exception, other exceptions, and other topics, on HealthIT.gov's Information Blocking FAQs page (*https://www.healthit.gov/faqs?f%5B0%5D=term_parent%3A7011*).

[13] *https://www.healthit.gov/sites/default/files/ltpac_healthit_educationmodule_8-7-17_ecm.pdf.*

[14] *https://www.healthit.gov/playbook/care-settings/.*

[15] In addition to fact sheets, FAQs, blogs, we offer recorded webinars, including a three-webinar series designed for the health care provider audience as a whole and one that we designed for and delivered to an LTPAC audience. The LTPAC webinar slides are available at: *https://www.healthit.gov/sites/default/files/2024-03/InformationBlockingPresentationPDF_LTPAC_2.22.24.pdf* (A link to view the recorded webinar is available from *https://www.healthit.gov/topic/information-blocking*).

[16] *https://www.healthit.gov/topic/privacy-security-and-hipaa.*

references paragraphs (a)(1) and (2) of § 171.202 instead of paragraphs (a)(2)(i) and (ii) when referencing a person who is the subject of EHI in defining the term ''individual.'' We proposed to make a technical correction to cross-references within the text of § 171.202(a)(2)(iii), (iv), and (v) to accurately cross-reference paragraph (a)(2)(i), (a)(2)(ii), or both, as applicable.

Paragraph (a)(2) of the current § 171.202 defines the term ''individual'' in part by referring to its definition in 45 CFR 160.103. In § 171.202(a)(2)(i), we cross-referenced to the definition of ''individual'' as defined in the HIPAA Privacy Rule at 45 CFR 160.103. In § 171.202(a)(2)(ii), we provided a second definition: ''any other natural person who is the subject of the electronic health information being accessed, exchanged, or used.'' [17] Then, in (a)(2)(iii), (iv), and (v), we expanded on those two definitions in order to include persons legally acting on behalf of such individuals or their estates in certain circumstances. However, the current text of § 171.202(a)(2)(iii), (iv), and (v) incorrectly referenced a ''person described in paragraph (a)(1) or (2) of this section'' instead of referencing a ''person described in paragraph (a)(2)(i) or (ii) of this section.''

The ONC Cures Act Final Rule preamble demonstrates our intent for the definition of ''individual'' in paragraph (a)(2) of § 171.202. Citing the ONC Cures Act Proposed Rule at 84 FR 7526, we stated in the ONC Cures Act Final Rule preamble (85 FR 25846 through 25847) that ''the term 'individual' encompassed any or all of the following: (1) An individual defined by 45 CFR 160.103; (2) any other natural person who is the subject of EHI that is being accessed, exchanged or used; (3) a person who legally acts on behalf of a person described in (1) or (2), including as a personal representative, in accordance with 45 CFR 164.502(g); or (4) a person who is a legal representative of and can make health care decisions on behalf of any person described in (1) or (2); or (5) an executor or administrator or other person having authority to act on behalf of the deceased person described in (1) or (2) or the individual's estate under State or other law.'' Further, still referencing the ONC Cures Act Proposed Rule preamble, we wrote at 85 FR 25845 that ''(3) encompasses a person with legal authority to act on behalf of the individual, which includes a person who is a personal representative as defined under the HIPAA Privacy Rule.'' The paragraph designated as ''(a)(3)'' in the ONC Cures Act Proposed Rule at 84 FR 7602 and referenced simply as ''(3)'' in the discussion at 85 FR 25845 was designated as (a)(2)(iii) in § 171.202 as finalized at 85 FR 25957 and currently codified.

We stated in the HTI–2 Proposed Rule (89 FR 63620) that the quotes from the ONC Cures Act Final Rule preamble above demonstrate a consistent intention across the ONC Cures Act Proposed and Final Rules to cross-reference in the paragraphs finalized (at 85 FR 25957) and codified in § 171.202 as (a)(2)(iii), (iv), and (v) the paragraphs finalized and codified in § 171.202(a)(2)(i) and (ii). Accordingly, we proposed the technical correction in the revised text of 45 CFR 171.202 (89 FR 63803) to reflect the correct reading and intent (89 FR 63620).

In drafting our proposed technical correction to § 171.202(a)(2), we determined that the cross-reference to (a)(2)(ii), a natural person who is the subject of the EHI being exchanged *other than* an individual as defined in 45 CFR 160.103, is not needed in describing (in (a)(2)(iii)) a person acting as a personal representative in making decisions related to health care specifically in accordance with 45 CFR 164.502(g) (89 FR 63620 to 63621). As we explained in the HTI–2 Proposed Rule (89 FR 63621), this is because 45 CFR 164.502(g) pertains to personal representatives of individuals as defined in 45 CFR 160.103 (persons who are the subject of PHI) under the HIPAA Privacy Rule. A person described in (a)(2)(i) is an individual as defined in 45 CFR 160.103 for purposes of the HIPAA Privacy Rule.[18] However, (a)(2)(ii) describes ''any *other* natural person who is the subject of the EHI being accessed, exchanged, or used'' (emphasis added) rather than an ''individual'' who is the subject of PHI under the HIPAA Privacy Rule. Such *other* person (described in (a)(2)(ii)) would not have a person who is a ''personal representative'' specifically in accordance with the 45 CFR 164.502(g) provisions pertaining to ''personal representatives'' under the HIPAA Privacy Rule. Therefore, we proposed to strike the unnecessary reference to § 171.202(a)(2)(ii) (a subject of EHI who does *not* meet the 45 CFR 160.103 (HIPAA Privacy Rule) definition of ''individual'') from the § 171.202(a)(2)(iii) description of a person who acts as a personal representative specifically in accordance with the HIPAA Privacy Rule provisions in 45 CFR 164.502(g). By striking an unnecessary cross-reference, the proposal would simplify the regulatory text without changing what the § 171.202(a)(2) definition of ''individual'' means or how it applies in practice.

Comments. We received two comments stating support for the proposal and none opposing. We received one comment questioning whether ''personal representative'' (§ 171.202(a)(iii)) is different from ''legal representative'' (§ 171.202(a)(iv)) and requesting that we provide an example of someone who is not a personal representative under § 171.202(a)(2)(iii) but is a legal representative who can make health care decisions under § 171.202(a)(2)(iv). This comment stated that the clarification would be useful to all actors.

Response. We appreciate commenters taking the time to provide feedback on this proposal. Having reviewed and considered all comments received on the § 171.202(a)(2) technical correction, we have finalized it as proposed.

We also appreciate the opportunity to explain again the difference between a ''personal representative'' (§ 171.202(a)(iii)) and a ''legal representative'' (§ 171.202(a)(iv)). As explained in the ONC Cures Act Final Rule (85 FR 25847), ''§ 171.202(a)(2)(iii) encompasses only a person who is a personal representative as defined under the HIPAA Privacy Rule.'' As revised by this final rule, that subparagraph reads, in its entirety: ''A person who legally acts on behalf of a person described in paragraph (a)(2)(i) of this section in making decisions related to health care as a personal representative, in accordance with 45 CFR 164.502(g).'' Thus, § 171.202(a)(iii) refers specifically, and only, to a person who is a ''personal representative''

[17] The definition of ''person'' for purposes of 45 CFR part 171 is codified in § 171.102 and is, by cross-reference to 45 CFR 160.103, the same definition used for purposes of the HIPAA Privacy Rule. The § 160.103 definition of ''person'' clarifies the meaning of ''natural person'' within it. We use ''natural person'' with that same meaning in § 171.202(a)(2) and throughout this discussion of § 171.202(a)(2). Consistent with the § 171.102 definition of ''person'' by cross-reference to the definition of ''person'' in 45 CFR 160.103, ''natural person'' in context of the information blocking regulations means ''a human being who is born alive.''

[18] In the second sentence that begins on page 89 FR 63621 in the HTI–2 Proposed Rule, the reference to ''45 CFR 170.103'' instead of ''45 CFR 160.103'' was a typographical error. Other references to the HIPAA Privacy Rule's definition of ''individual'' in the HTI–2 Proposed Rule correctly reference 45 CFR 160.103, including the reference in the first sentence of the paragraph in which the ''45 CFR 170.103'' typographical error appears. In this summary of our explanation at 89 FR 63620 through 63621, we have used the correct reference (45 CFR 160.103) rather than reproducing the error that appeared at 89 FR 63621.

consistent with 45 CFR 164.502(g).[19] We refer readers interested in learning more about personal representatives under the HIPAA Privacy Rule to 45 CFR 164.502(g), 45 CFR 164.524, and to guidance provided in the OCR section of the Department's official website, *HHS.gov.*[20]

We distinguish a ''personal representative'' under the HIPAA Privacy Rule (specifically, consistent with 45 CFR 164.502(g)) from all other persons who are *legal* representatives and who can make health care decisions on behalf of the individual who is the subject of EHI (whether or not that EHI is also PHI). We include reference to § 171.202(a)(i) in § 171.202(a)(iv) because—in limited circumstances as permitted under State law, or Tribal law where applicable—a family member may be the *legal* representative to act on behalf of a patient to make health care decisions in emergency situations even if that family member may not be the ''personal representative'' of the individual in accordance with 45 CFR 164.502(g).

Comments. We received several comments requesting that we clarify how or where the HTI–2 Proposed Rule treats an actor that is a covered entity differently than an actor that is not a covered entity.

Response. It is not clear whether these comments refer to all or only some of the information blocking enhancement proposals in the HTI–2 Proposed Rule (89 FR 63616 through 63643 and 89 FR 63802 through 63805). Therefore, to ensure it is easy for readers to map our answer to each of the proposals finalized in this rule, we summarize and respond to these comments in context of each of the enhancements finalized in this final rule.

The definition of ''individual'' in § 171.202(a)(2) applies for purposes of all of the sub-exceptions (paragraphs (b), (c), (d), and (e)) of the Privacy Exception (§ 171.202). This definition explicitly includes both ''individuals'' as defined in 45 CFR 160.103 (§ 171.202(a)(2)(i)) and ''any other natural person who is the subject of the electronic health information being accessed, exchanged, or used'' [21] (§ 171.202(a)(2)(ii)). Thus, the definition of ''individual'' is constructed to account for both § 171.102 ''actors'' who are, and § 171.102 ''actors'' who are not, subject to the HIPAA regulations in 45 CFR parts 160, 162, and 164.

Comments. We received several comments requesting or recommending that we clarify or reaffirm what ''natural person'' means when used in defining ''individual'' or ''patient'' for purposes of the information blocking regulations.

Response. Although the comments requesting clarification of what ''natural person'' means within the definition of ''individual'' did not specifically connect the request to the Privacy Exception, § 171.202(a)(2) is the only place in 45 CFR part 171 where we have codified a definition of the word ''individual.'' That definition includes at § 171.202(a)(2)(ii) ''any other natural person who is the subject of the electronic health information being accessed, exchanged, or used.'' Therefore, we believe responding to comments requesting clarity or confirmation of what ''natural person'' means within the definition of ''individual'' in context of the technical correction to § 171.202(a)(2) will make it easier for actors to find when they need it to understand and, if they choose to, apply the Privacy Exception (§ 171.202).

Consistent with the § 171.102 definition of ''person'' by cross-reference to the definition of ''person'' in 45 CFR 160.103, ''natural person'' in context of the information blocking regulations means ''a human being who is born alive.'' In 2002, Congress enacted 1 U.S.C. 8, which defines ''person,'' ''human being,'' ''child,'' and ''individual.'' The statute specifies that these definitions shall apply when determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States. When used in any definition of ''patient'' outlined in 45 CFR part 171, the term ''natural person'' has the same meaning that it has within the definition of ''person'' in § 171.102, and in the definition of ''individual'' in § 171.202(a)(2)(ii), which is a human being who is born alive. The term ''patient'' was included in the proposed Protecting Care Access Exception (§ 171.206), which is finalized in this final rule. We therefore address other comments regarding the meaning of ''patient'' in the context of § 171.206 in the section of this rule's preamble that is specific to the Protecting Care Access Exception.

b. Privacy Sub-Exception—Individual's Request Not To Share EHI

In the HTI–2 Proposed Rule, we proposed to slightly modify the header of § 171.202(e) for ease of reference to ''individual's request not to share EHI'' (89 FR 63622). More importantly, we proposed to revise the sub-exception to remove a limitation that applied the exception only to individual-requested restrictions on EHI sharing where the sharing is not otherwise required by law. Thus, we proposed to extend the availability of the § 171.202(e) sub-exception to an actor's practice of implementing restrictions the individual has requested on the access, exchange, or use of the individual's EHI even when the actor may have concern that another law or instrument could attempt to compel the actor to fulfill access, exchange, or use of EHI contrary to the individual's expressed wishes.

The original text and scope of 45 CFR 171.202(e) was established in 2020 by the ONC Cures Act Final Rule (85 FR 25642). When the sub-exception was established, health care providers and other actors did not raise explicit concerns regarding when they must comply with statutes, regulations, or instruments (such as subpoenas) issued under the laws of states in which they are not licensed, do not reside, and do not furnish care. In 2022, the Supreme Court decision in *Dobbs* v. *Jackson Women's Health Organization* overturned precedent that protected a federally protected constitutional right to abortion and altered the legal and health care landscape.[22] Since the Court's decision, across the United States, a variety of states have newly enacted or are newly enforcing restrictions on access to abortion and other reproductive health care. The Court's ruling—and subsequent state restrictions—have had far-reaching implications for health care beyond the effects on access to abortion.[23]

In light of the changing landscape and the limitation of § 171.202(e) as

[19] 45 CFR 164.502(g) sets forth the HIPAA Privacy Rule's ''personal representative'' standard and implementation specifications.

[20] *https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/index.html*

[21] The definition of ''person'' for purposes of 45 CFR part 171 is codified in § 171.102 and is, by cross-reference to 45 CFR 160.103, the same definition used for purposes of the HIPAA Privacy Rule. The § 160.103 definition of ''person'' clarifies the meaning of ''natural person'' within it. We use ''natural person'' with that same meaning in § 171.202(a)(2) and throughout this discussion of § 171.202(a)(2). Consistent with the § 171.102 definition of ''person'' by cross-reference to the definition of ''person'' in 45 CFR 160.103, ''natural person'' in context of the information blocking regulations means ''a human being who is born alive.''

[22] *See* 142 S. Ct. 2228.

[23] *See* Melissa Suran, ''Treating Cancer in Pregnant Patients After Roe v Wade Overturned,'' JAMA (Sept. 29, 2022), (available at *https://jamanetwork.com/journals/jama/fullarticle/2797062#:~:text=The%20US%20Supreme%20Court,before%20cancer%20treatment%20can%20begin*), and Rita Rubin, ''How Abortion Bans Could Affect Care for Miscarriage and Infertility,'' JAMA (June 28, 2022), (available at *https://jamanetwork-com.hhsnih.idm.oclc.org/journals/jama/fullarticle/2793921?resultClick=1).* (URLs retrieved May 23, 2024.)

established by the ONC Cures Act Final Rule (85 FR 25958), we noted in the HTI–2 Proposed Rule our concern that actors might deny or terminate an individual's requested restrictions on sharing their EHI specifically due to uncertainty about whether the actor is aware of and can account for any and all laws that might override the individual's requested restrictions (89 FR 63622). Due to that uncertainty, an actor who might otherwise be inclined to agree to an individual's request not to share their EHI could be concerned about potential information blocking implications of honoring the individual's requests in the face of demands for disclosure that *might* ultimately be enforced in a court of competent jurisdiction. In particular, as we noted at 89 FR 63622, we were and are concerned that actors may be unwilling to consider granting individuals' requests for restrictions to sharing their EHI, or may prematurely terminate some or all requested restrictions, based on uncertainty as to whether information blocking penalties or appropriate disincentives might be imposed if the actor ultimately is required by another law to disclose the information. For example, we understand actors are concerned about potentially implicating the information blocking definition by delaying a disclosure of EHI pursuant to a court order that the actor is aware is being contested, so that the actor can wait to see if the order will, in fact, compel the actor to make EHI available for access, exchange, or use contrary to the individual's request for restrictions to which the actor had agreed consistent with § 171.202(e). Accordingly, we proposed to remove the ''unless otherwise required by law'' limitation from § 171.202(e) to help address actors' uncertainty about various state laws' applicability as they relate to information blocking (89 FR 63622).

We explained in the HTI–2 Proposed Rule (89 FR 63622) that the proposed revision to § 171.202(e) could serve as a useful complement to the Precondition Not Satisfied sub-exception (§ 171.202(b)). We also noted in the HTI–2 Proposed Rule, and reaffirm here, that the § 171.202(b) sub-exception of the Privacy Exception outlines a framework for actors to follow so that the actors' practices of not fulfilling requests to access, exchange, or use EHI would not constitute information blocking when one or more preconditions has not been satisfied for the access, exchange, or use to be permitted under applicable Federal, State, or Tribal laws. For actors' and other interested parties' clarity regarding the relationship between paragraphs (b) and (e) of § 171.202, we now also note that each sub-exception under the Privacy Exception (§ 171.202) stands alone and operates independently of each other sub-exception. Thus, an actor's practice that fully meets the requirements of *any one* sub-exception (paragraph (b), (c), (d), or (e) of § 171.202) need not also satisfy any other sub-exception (any other of paragraphs (b) through (e) within § 171.202) in order to be covered by the Privacy Exception (§ 171.202).

We noted in the HTI–2 Proposed Rule that the proposed revision to § 171.202(e) would not operate to override other law compelling disclosure against the individual's wishes (89 FR 63622). The revision is intended to offer actors who elect to honor an individual's requested restrictions certainty that applying those restrictions will not be considered information blocking so long as the actor's practices in doing so satisfy the requirements of the § 171.202(e) sub-exception. Whether any other law in fact applies to any given actor and compels production of any EHI (or other data) is beyond the scope of this final rule.

If a law requires a particular actor to fulfill a request to access, exchange, or use EHI without the individual's authorization, permission, or consent, the actor might be compelled to comply with that law independent of the information blocking statute and 45 CFR part 171. This has been the case since the first eight information blocking exceptions were finalized in the ONC Cures Act Final Rule (85 FR 25642) and will continue to be the case despite the revision to § 171.202(e) proposed in the HTI–2 Proposed Rule (89 FR 63622 and 63803) and finalized in this final rule.

We reiterate here for emphasis the reminder we included in the HTI–2 Proposed Rule (89 FR 63622) that HIPAA covered entities and business associates must comply with the HIPAA Privacy Rule, including privacy protections in the ''HIPAA Privacy Rule to Support Reproductive Health Care Privacy'' final rule (89 FR 32976, April 26, 2024) (2024 HIPAA Privacy Rule) and any other applicable Federal laws that govern the use of EHI. For example, an actor's practice likely to interfere with an individual's access, exchange, or use of EHI (as defined in 45 CFR 171.102) might satisfy an information blocking exception without complying with the actor's separate obligations under 45 CFR 164.524 (HIPAA Privacy Rule's individual right of access). In such cases, an actor that is a HIPAA covered entity or business associate would be subject to penalties for violating the HIPAA Privacy Rule.

Comments. The overwhelming majority of comments supported the proposed revisions to § 171.202(e) and provided multiple reasons for their support. Many commenters specifically agreed with our reasoning that in the current environment, actors may be unwilling to consider granting individuals' requests for restrictions on sharing of their EHI, or may prematurely terminate requested restrictions, due to uncertainty about whether laws might exist that would override the individual's requested restrictions and fear of resulting information blocking penalties or appropriate disincentives.

Several commenters stated that the proposed revisions will offer meaningful protections against criminalization risks faced by patients and give greater certainty to health care providers who otherwise might deny an individual's requested restrictions on sharing their EHI due to uncertainty about laws that could supersede these requests. Several commenters specifically highlighted uncertainty regarding potential legal risks related to reproductive health care as reasons for supporting the proposed revisions. Several commenters stated that the proposed revisions will give physicians and other actors the confidence to delay the disclosure of EHI in accordance with this sub-exception when they are aware that a court order is being contested. One commenter noted that currently, confusion and concern about withholding EHI at the request of a patient due to a contested court order leads physicians and other actors to disclose EHI against a patient's wishes out of fear of information blocking accusations or penalties.

Several commenters stated that the proposed revisions would benefit actors by reducing information blocking compliance burdens, noting that the proposed revisions reduce burden and costs by simplifying the analysis of whether the sub-exception is applicable. One commenter also stated that the proposed revisions are needed to align with the proposed Protecting Care Access Exception given the variability regarding what information must be disclosed in connection with reproductive health care services in different jurisdictions. Some commenters stated that the proposed revisions would provide actors with greater flexibility in managing EHI sharing. Additionally, commenters stated that clarifying the applicability of various laws related to information blocking through the proposed revisions

will protect patients and physicians, encourage the use of health IT, and support care coordination.

Several commenters in support of the proposed revisions stressed that the revisions would help maintain and strengthen a patient's ability to trust their providers and would improve the patient-provider relationship, as patients and providers would be empowered to discuss and determine the level of risk a patient is willing to take. Commenters stated that patient preferences should always be the priority when providers are faced with an EHI disclosure request. One commenter noted the proposed revisions balance ensuring patient autonomy over their EHI while upholding existing legal frameworks for EHI disclosure.

Response. We appreciate the many comments in favor of the proposed revisions to § 171.202(e) and recognition of the benefits that we outlined in the HTI–2 Proposed Rule (89 FR 63622). Having reviewed and considered all comments received relevant to this sub-exception, we have finalized the revision to the Privacy sub-exception ''individual's request not to share EHI'' in § 171.202(e) as proposed in the HTI–2 Proposed Rule (89 FR 63803).

Comments. Several commenters expressed concerns about potential unintended legal consequences for actors who restrict the sharing of EHI under the information blocking regulations when it is contrary to an existing law. These commenters generally did not support the proposed revisions and recommended that ASTP/ONC maintain the existing limitation allowing the use of this sub-exception unless disclosure is required by law. One commenter stated that not allowing reliance on this sub-exception when the disclosure is required by law would align the sub-exception with HIPAA and thus reduce complexity for actors and serve public policy since restricting the sharing of EHI could adversely affect patient care in cases such as emergency treatment.

Response. We appreciate these comments and reiterate that the finalized revisions to § 171.202(e) do not override other laws compelling disclosure against the individual's wishes, as we noted when we proposed them (89 FR 63622). As we stated in the HTI–2 Proposed Rule, where there may be a law requiring a particular actor to fulfill a request to access, exchange, or use EHI without the individual's authorization, permission, or consent, the actor might be compelled to comply with that law independent of the information blocking statute (section 3022 of Title XXX of the PHSA) and 45 CFR part 171 (89 FR 63622).

Knowing that the exception does not override any other law(s) with which an actor knows they must comply, any actor can choose to honor an individual's request to the extent that they are able under such law(s) and can choose how to communicate to the individual the limits of the actor's ability to honor that request under such law(s). For example, an actor that is also required to comply with the HIPAA Privacy Rule with respect to an individual's information could choose to agree to honor requests for restrictions on disclosures of PHI that the HIPAA Privacy Rule does not require (see 45 CFR 164.502(a)(2) ''Covered entities: Required disclosures''). Such an actor could also choose how to communicate to an individual that the actor is able to honor the request for restrictions only to the extent that the restrictions do not prevent the actor from disclosing PHI as required under 45 CFR 164.502(a)(2).

The § 171.202(e) sub-exception applies to requests that an actor chooses to honor and that the HIPAA Privacy Rule *permits* (but does not *require*) the actor to honor, as well as to scenarios where the actor is not required to comply with the HIPAA Privacy Rule. We remind readers that where an actor that is subject to the HIPAA Privacy Rule is required to agree to an individual's requested restriction on use or disclosure of PHI that is also EHI, such as where 45 CFR 164.522(a)(1)(ii) and (vi) applies, the actor's agreeing to and applying such restrictions is ''required by law.'' [24] The revisions to § 171.202(e) finalized in this rule are intended to address concerns of actors who are worried about potential implications specific to the information blocking regulations (45 CFR part 171) of attempting to honor an individual's request (that they want to agree to honor) in the face of uncertainty about whether some statute they are not certain is applicable, or some other legally enforceable mandate (such as a contested court order), may or may not ultimately compel them to make EHI available for access, exchange, or use.

Regarding potential adverse impacts of restricted sharing based on the individual's request that some or all of their EHI not be shared for certain or any purpose(s), it is important to recognize that the sub-exception is not intended to create an affirmative obligation on the part of any actor to agree to honor any particular individual request(s) that the individual's EHI not be shared to the full extent permitted by applicable law (HIPAA Privacy Rule, other Federal law that may apply such as 42 CFR part 2, or, where applicable, State or Tribal laws). Moreover, as we explained when we originally finalized this sub-exception in the ONC Cures Act Final Rule, we recognize that an individual's requested restriction may need to be compromised in emergency treatment situations and therefore we provided for the ability of an actor to terminate an individual's requested restriction under limited circumstances (85 FR 25859). We did not propose, nor have we finalized, any revisions to the termination provisions of this sub-exception in § 171.202(e)(4).

Comments. Several commenters expressed concerns that the proposed revisions to § 171.202(e) may undermine information sharing and interoperability of EHI as well as inhibit sharing for treatment and other allowable purposes. One commenter provided examples to illustrate the concern, including: if a patient requests that EHI from a visit with a specialist be restricted from their primary care provider; restricting EHI needed for coordinated care and safe medication management; and limiting the sharing of health information used for operational purposes such as teaching that are permitted under HIPAA.

Response. We appreciate the opportunity to clarify why we do not agree that the proposed revisions to this exception would inhibit information sharing or interoperability of EHI on the whole. To satisfy the existing requirements in § 171.202(e)(3), which we did not propose to revise and have not revised in this final rule, the actor's practice must be implemented in a consistent and non-discriminatory manner. As we noted when we originally finalized the sub-exception in the ONC Cures Act Final Rule, this provides basic assurance that the practice is directly related to the risk of disclosing EHI contrary to the wishes of an individual and is not being used to interfere with access, exchange, or use of EHI for other purposes (85 FR 25857). We further noted that this condition requires that the actor's privacy-protective practice must be based on objective criteria that apply uniformly for all substantially similar privacy risks (85 FR 25857).

[24] Where applicable law prohibits a specific access, exchange, or use of information, the information blocking regulations consider the practice of complying with such laws to be ''required by law.'' Practices that are ''required by law'' are not considered ''information blocking'' (*see* the statutory information blocking definition in section 3022(a)(1) of the PHSA and the discussion in the HTI–1 Final Rule at 89 FR 1351 and in the ONC Cures Act Final Rule at 85 FR 25794).

Specific to concerns about an individual potentially requesting restrictions on EHI sharing that an actor believes would, if implemented, compromise the patient's health or care, we emphasize that the § 171.202(e) sub-exception, like all information blocking exceptions, is voluntary. Exceptions are intended to offer actors certainty that the practices in which they choose to engage consistent with the conditions of an exception will not be considered information blocking, but they are not intended to create, and do not create, an affirmative obligation for any actor to choose to engage in all of the practices that could potentially be covered by any given exception(s). If an actor is unwilling to agree to an individual's requested restrictions on sharing the individual's EHI for teaching or another permitted purpose, nothing in 45 CFR part 171 is intended to obligate the actor to honor the individual's request. We note, however, that an actor's practice to honor or decline individual requests for restrictions in a discriminatory manner—such as based on whether the individual's other health care provider(s) or those providers' health IT developer(s) were competitor(s) or affiliate(s) of the actor—would be inappropriate and could implicate the information blocking definition.

Comments. Several commenters focused on minor patients' EHI and the applicability of the sub-exception in proxy situations. One commenter stated that it is important to consider who is making the request not to share EHI. The commenter noted that there may be times when the adolescent is making the request not to share information and times when the parent is making the request, stating that it would be helpful for ASTP/ONC to explicitly clarify that an adolescent's request not to share information is allowed under the sub-exception unless otherwise prohibited by State law. Another commenter stated that ASTP/ONC must ensure that providers have flexibility to address the confidentiality needs of minor patients and reflect specific state or local requirements, noting the variation in federal and state rules and regulations around parent/guardian access to adolescent data. Other commenters sought clarification that this sub-exception would apply to proxy consent situations.

Response. We clarify that, as proposed (89 FR 63622) and finalized, the revisions to § 171.202(e) offer actors who elect to honor an individual's request not to share EHI certainty that applying the requested restrictions on sharing will not be considered information blocking so long as the actor's practices in doing so satisfy the requirements of the § 171.202(e) Privacy sub-exception. We did not propose, nor are we finalizing, any revisions to the requirements of the § 171.202(e) Privacy sub-exception that would categorically limit application of the sub-exception to only requests from individuals who are not unemancipated minors. Thus, it is possible that the exception could apply to some scenarios where a parent seeks access, exchange, or use of a non-emancipated minor's EHI when an actor has agreed to the request of the minor (as the individual as described in § 171.202(a)(2)(i) or (ii)) that the EHI not be made available to the minor's parents or other representatives. However, we remind actors and other interested parties that where an actor's practice meets the sub-exception's requirements, the revised § 171.202(e) Privacy sub-exception (like any Privacy sub-exception or any other exception codified in subparts B, C, or D of 45 CFR part 171), simply offers actors assurance that the practice will not constitute ''information blocking'' under 45 CFR part 171. We emphasize that the revisions to § 171.202(e) do not change how the HIPAA Privacy Rule, or other Federal, State, or Tribal law, applies to adults or minors. In various circumstances, one or more of such other laws may require disclosure of all of an unemancipated minor's health information to the minor's personal representative (consistent with 45 CFR 164.502(g)) or other legal representative as established by applicable law. We also refer readers to the information about how the HIPAA Privacy Rule applies to minors that can be found at 45 CFR 164.502(g) and on the OCR website.[25] We also note that revisions to § 171.202(e) do not change how any other Federal, State, or Tribal law applies to proxy requests. We stress that the revisions to § 171.202(e) do not override other law compelling disclosure against the individual's wishes, and whether courts will or should apply any particular Federal, State, or Tribal law to any actor to compel disclosure of any type of information to any requestor for any purpose is beyond the scope of this final rule.

Comments. A couple of commenters expressed concern that patients requesting restrictions on sharing of EHI may lack an understanding of the potential safety impact of not sharing complete health information with their other providers as well as the feasibility of the request to not share information. These commenters generally recommended that if finalized as proposed, ASTP/ONC should provide education on these issues for patients and other interested parties.

Response. We reiterate that the § 171.202(e) Privacy sub-exception does not create an affirmative obligation for any actor to agree to any individual's request for restrictions on access, exchange, or use of the individual's EHI. Where no other applicable law *requires* the actor to agree to an individual's requested restriction, the actor would have discretion to discuss the potential implications of a requested restriction on the availability of information to the individual's other health care providers before agreeing to the request, to not agree to apply restrictions the actor believes introduce unacceptable risks to the patient's health or safety, and to explain to the individual why the actor will not honor the individual's request(s) to which the actor chooses not to agree. We reiterate, however, that if an actor's practice specific to granting individual requests for restrictions is implemented in an inconsistent or discriminatory manner, that practice would not meet the § 171.202(e)(3) requirements, would therefore not be covered by the Privacy Exception (§ 171.202), and could implicate the information blocking definition in § 171.103.

We also appreciate the opportunity to remind readers of our continued commitment to support EHI sharing consistent with patient preferences and applicable law. Whether received through the public comments process for a proposed rule or through informal channels, we appreciate the feedback and questions we receive. They help to inform our development of information resources that we make publicly available on *HealthIT.gov*. Informal channels include, for example, the Health IT Feedback and Inquiry Portal [26] that is available year-round and not tied to the comment period for a proposed rule.

Comments. A couple of commenters expressed concern about the feasibility of actors implementing individuals' requested restrictions on the sharing of EHI, and some stated that the technology to operationalize segmentation of data does not exist. One commenter recommended that if revisions to the Privacy Exception are

[25] *See https://www.hhs.gov/hipaa/for-professionals/faq/personal-representatives-and-minors/index.html, https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html,* and *https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/index.html.*

[26] To find the portal, please click, paste, or search *https://www.healthit.gov/feedback*

finalized as proposed, ASTP/ONC should pursue certification program initiatives to create the needed technology. Another commenter recommended that ASTP/ONC help ensure that operationalizing data segmentation is an immediate priority for health IT developers by offering financial incentives for developers enabling restrictions on sharing of EHI.

Response. We appreciate these comments regarding segmentation technology relevant to circumstances where an actor may wish to agree to an individual's request that only some of the individual's EHI not be shared. In proposing to revise § 171.204(e), we recognized the importance of data segmentation technology for exchanging sensitive health data and enabling access, exchange, and use of EHI (89 FR 63634). We also noted our awareness of the limitations of current health IT capabilities for data segmentation and of external efforts to develop technical standards that over time may result in increasingly advanced data segmentation capabilities in EHR systems and other health IT (89 FR 63634). These statements are also relevant in the context of the § 171.202(e) Privacy sub-exception and an actor's practice of implementing restrictions requested by an individual on the access, exchange, or use of the individual's EHI. As we indicated in the HTI–1 Final Rule (89 FR 1301), we continue to encourage and engage with industry and standards development community efforts to advance standards supporting privacy workflows and to monitor the continued evolution of relevant standards to consider in new or revised criteria in future rulemaking. In the HTI–1 Final Rule, we specifically discussed the HL7 data segmentation for privacy (DS4P) implementation guides (89 FR 1301). It is not clear from the comments we received what mechanism(s) the commenters may have envisioned ASTP/ONC using to make data segmentation innovation and advancement an immediate priority for health IT developers, or to offer financial incentives to developers.

In the HTI–1 Proposed Rule, we made several proposals related to the ONC Health IT Certification Program to support additional tools for implementing patient requested privacy restrictions. We proposed a new certification criterion in § 170.315(d)(14), an addition to ASTP/ONC's Privacy and Security Framework under the Program in § 170.550(h), and a revision to an existing ''view, download, and transmit to 3rd party'' certification criterion in § 170.315(e)(1) (88 FR 23822 through 23824). We sought public comment on these proposals—the new criterion in § 170.315(d)(14), the inclusion of the request capability for patients in § 170.315(e)(1), and the requirements with the Privacy and Security Framework in § 170.550(h)—both separately and as a whole. We specifically sought comment on the feasibility of each part in terms of technical implementation and usefulness for patients and covered entities using these capabilities. We proposed and sought comment on several alternatives which would add standards to the proposed new certification criterion and would specifically leverage HL7 DS4P IGs for the new certification criterion in § 170.315(d)(14). We also proposed and sought comment on alternate proposals that looked exclusively at the HL7 Privacy and Security Healthcare Classification System (HCS) Security Label Vocabulary within the HL7 DS4P IGs for a source taxonomy for the ''flag'' applied to the data (88 FR 23822). We sought comment on the health IT development burden associated with implementation of the capabilities including for the individual certification criterion referenced in the Privacy and Security Framework in § 170.550(h). As noted in the HTI–1 Final Rule, we also expressed our concerns about feasibility, timelines, and the overall complexity of the workflows and the related capabilities associated with this right as well as our intent to propose several options for consideration by the health care and health IT communities (89 FR 1301). We refer readers to the HTI–1 Final Rule for discussion of these proposals and of public comments received in response to the primary and alternative proposals we made specific to functionalities supporting individuals' requests for restrictions (89 FR 1298 through 1305).

The *segmentation* condition (§ 171.204(a)(2)) of the Infeasibility Exception specifies a condition [27] under which an actor who is not able to segment EHI that the actor must [28] or may have chosen to withhold [29] from other EHI that the actor could share with a requestor (or various requestors) for permissible purposes can ensure that not fulfilling a request to access, exchange, or use the requested EHI is not information blocking. The § 171.204(a)(2) *segmentation* condition has applied, since it was established in the ONC Cures Act Final Rule (85 FR 25867 and 25958), where the actor cannot fulfill a request for access, exchange, or use of EHI because the actor cannot unambiguously segment the requested EHI from EHI that cannot be made available due to an individual's preference, cannot be made available by law, or that may be withheld in accordance with § 171.201.

In the HTI–2 Proposed Rule, we proposed to explicitly reference the entire § 171.202 Privacy sub-exception in our revisions to § 171.204(a)(2) and noted that this would ensure that the *segmentation* condition would continue to apply where the actor cannot segment EHI which the actor has chosen to withhold in honoring an individual's request not to share EHI consistent with § 171.202(e) (89 FR 63623). In another section of this final rule preamble, we discuss the revisions we have finalized to § 171.204(a)(2), including a reference to the entire § 171.202 Privacy sub-exception in § 171.204(a)(2)(ii). We also refer readers to the discussion in the HTI–1 Final Rule of how ''stacking'' of exceptions may occur where an actor may wish to engage in one or more practice(s) that are covered in part, but not fully covered, by one exception (such as the Privacy Exception). The HTI–1 Final Rule discussion (89 FR 1353 and1354) includes an illustrative example where the actor has elected to grant an individual's request consistent with § 171.202(e).

Comments. A couple of commenters expressed a need for clarification on how the proposed revisions to this sub-exception work. These commenters asked for examples of use cases and urged ASTP/ONC to develop comprehensive guidance to ensure actors understand when and how the sub-exception applies. One commenter recommended that ASTP/ONC work across agencies and with other parties, including payers, to provide more clarity around the sub-exception to help ensure it is not overinterpreted or used to limit sharing of EHI unnecessarily. Specific areas where clarity was requested included standards for segmenting clinical data, differences in clinical versus claim codes, how third-party, non-HIPAA regulated entities can be held to standards, including standards required under TEFCA, and how entities can rely on the stated purpose of the information request.

Response. We appreciate the comments and offer the following use

[27] The actor would still need to meet the requirements of § 171.204(b) for the Infeasibility Exception to apply.

[28] An example of when an actor must withhold EHI would be if an individual chose not to give consent that is a pre-requisite for a particular access, exchange, or use to be permissible under applicable State or Tribal law.

[29] An example of when an actor may have chosen to withhold EHI would be if an actor chose to agree to an individual's request that the individual's EHI not be shared.

cases as illustrative examples, while reminding readers that this is *not* an exhaustive list. The revised § 171.202(e) Privacy sub-exception could also be met in other scenarios (use cases) not specifically discussed here.

One use case where the revised § 171.202(e) Privacy sub-exception is intended to apply is where an actor is concerned about implicating the information blocking definition by delaying a disclosure of EHI pursuant to a court order that the actor is aware is being contested (89 FR 63622). In this use case, the actor could choose to meet the requirements of the revised Privacy sub-exception in § 171.202(e) in order to have assurance that it will not be ''information blocking'' to delay release of EHI in compliance with an individual's request for restrictions while waiting to see if the order will eventually compel the actor to make EHI available for access, exchange, or use contrary to the individual's request for restrictions to which the actor had agreed consistent with § 171.202(e).

Another use case to which the revised § 171.202(e) Privacy sub-exception would apply is where an actor is inclined to grant an individual's request for restrictions but is uncertain whether other authority might compel the actor to provide access, exchange, or use of EHI despite the individual's wishes and is concerned about potentially implicating the information blocking definition if, after granting the request, the actor learns of or confirms that such other authority compels provision of access, exchange, or use of EHI contrary to the individual's expressed wishes. (We discussed this use case, in explaining the need for this revision, in the HTI–2 Proposed Rule at 89 FR 63622). In this use case, an actor could choose to meet the requirements of the revised Privacy sub-exception in § 171.202(e) and have assurance that honoring the individual's request and applying those restrictions in the interim or for other requestors will not be considered information blocking even if other law ultimately compels disclosure to specific requestor(s) (for permissible purposes) [30] against the individual's wishes.

However, we reiterate that a practice satisfying the conditions and requirements to be covered by any exception to the information blocking definition simply means HHS will not consider the practice to be ''information blocking'' under 45 CFR part 171 or the information blocking statute (PHSA section 3022). We emphasize, again, that the revisions to § 171.202(e) do not operate to override other law compelling disclosure against the individual's wishes, and if a court with jurisdiction over the actor and subject matter enforces, via court order, a law that requires a particular actor to fulfill access, exchange, or use of EHI without the individual's authorization, permission, or consent, the actor would be compelled to comply with that law independent of the information blocking statute and 45 CFR part 171.

The specific requests for clarity on segmentation standards, other standards-related issues, TEFCA, and reliability of information requests are beyond the scope of the proposal to revise § 171.202(e). We refer readers to our official website, *HealthIT.gov*, for more information on the ONC Health IT Certification Program, TEFCA, and a wide variety of other health IT topics in addition to information blocking and note that we continue to work alongside federal partners and other interested parties, including providers and payers, to serve as a resource to the entire health system in support of the adoption of health information technology and the promotion of nationwide, standards-based health information exchange to improve health care.

Comments. A couple of commenters expressed concern that not sharing EHI could be a default position for actors and stated that sharing of data in the spirit of the information blocking rules should be the default position. These commenters sought clarification that an actor must receive a specific request from an individual in order to trigger this exception.

Response. An actor's practice of honoring an individual's request not to share EHI will be covered by the § 171.202(e) Privacy sub-exception only so long as the practice satisfies the requirements found in § 171.202(e)(1)–(4). The requirements in § 171.202(e)(1)–(4), to which we did not propose changes and have made no changes, include that ''the individual requests that the actor not provide such access, exchange, or use of electronic health information without any improper encouragement or inducement of the request by the actor'' (§ 171.202(e)(1)). We also remind readers that the term ''individual'' is defined for purposes of the Privacy Exception in § 171.202(a), as discussed in this final rule.

We appreciate the opportunity to emphasize that the revised § 171.202(e) Privacy sub-exception remains specific to restrictions an individual requests and that are applied on an individual basis. We emphasize that in order to be covered by the § 171.202(e) Privacy sub-exception, an actor's practice of restricting the access, exchange, or use of any individual's EHI must be triggered by a request consistent with § 171.202(e)(1) from the individual (as described in § 171.202(a)(2)(i) and (ii)) or their representative (as described in § 171.202(a)(2)(iii) or (iv)) or a person having authority to act on behalf of a deceased person (as described in § 171.202(a)(2)(v)).

Comments. Several commenters requested that we clarify how or where the HTI–2 Proposed Rule treats an actor that is a covered entity differently than an actor that is not a covered entity.

Response. It is not clear whether these comments refer to all or only some of the information blocking enhancement proposals discussed in the HTI–2 Proposed Rule (89 FR 63616). Therefore, to ensure it is easy for readers to map our answer to each of the proposals finalized in this rule, we summarize and respond to these comments in the context of each of the enhancements finalized in this final rule.

The § 171.202(e) (individual's request not to share EHI) sub-exception is applicable to any actor's practice that meets its requirements. The § 171.202(e) sub-exception is available, and all of its requirements apply equally, to any actor's practice without regard to whether the actor also happens to be a HIPAA covered entity or business associate.

Please see our additional responses addressing these comments in other sections of this final rule.

Comments. Several comments received were beyond the scope of the proposed revisions to the sub-exception. One commenter commented on the documentation provisions in § 171.202(e)(2), which we did not propose to revise. The commenter noted that the current language requires documentation of the request not to share EHI in a timely manner and stated that if an actor fails to do so, then the actor could be subject to an information blocking claim for not sharing the information and the individual requesting the restriction would suffer unintended consequences of an actor's

[30] For purposes of the information blocking regulations (45 CFR part 171), ''permissible purpose'' is defined in § 171.102. Notably, the § 171.102 definition of ''permissible purpose'' would *not* apply to a purpose for which access, exchange, or use of EHI is prohibited by Federal or, where applicable, State or Tribal law. Examples of such federal law prohibitions are not limited to but do include the HIPAA Privacy Rule's prohibition of the use and disclosure of genetic information for underwriting purposes (45 CFR 164.502(a)(5)(i) and the HIPAA Privacy Rule's prohibition of using or disclosing reproductive health care information for the activities identified in 45 CFR 164.502(a)(5)(iii)(A)(*1*)–(*3*) (subject to paragraphs (B) and (C) of 45 CFR 164.502(a)(5)(iii)).

oversight. One commenter expressed concern about verbal requests, which were not an aspect of the proposed revisions to § 171.202(e). Another commenter recommended that ASTP/ONC and the HHS Office of Inspector General begin investigations into information blocking no earlier than January 1, 2027, if the provider claims they are protected under the Privacy Exception, in order to give providers at least one year to integrate the new patient requested restrictions technology into their practices.

Response. We appreciate these comments, however we did not propose or solicit comment on any potential revision(s) to the request provisions of § 171.202(e)(1), which do not mention verbal requests, or the documentation provisions of § 171.202(e)(2). We also did not propose to establish a moratorium on OIG investigating any claim of information blocking, or on ASTP/ONC reviewing potential non-conformities of ONC-Certified Health IT with ONC Health IT Certification Program (Program) requirements—such as a Program-participating developer's potential non-compliance with § 170.401 Information Blocking Condition and Maintenance of Certification requirements. We do not believe such moratorium is necessary. Like all other information blocking exceptions, the Privacy Exception and each of its sub-exceptions is *voluntary* and does not require an actor to deploy or use specific technology(ies) as a condition of a practice by the actor being covered by the exception.

We recognize that it may be easier or more efficient for an actor to engage in practices covered by some exceptions if they have more comprehensive or advanced technological capabilities than if they have only limited or outdated technological capabilities. For example, for an actor to conform practices to § 171.202(e) if they have efficient electronic workflows for receiving (or otherwise logging) individuals' requests that the individual's EHI not be shared, identifying whatever subset of such requests as applicable law(s) require the actor to honor,[31] and considering whether the actor is willing to agree to other individual-requested restrictions. However, as we have maintained since establishing the first eight exceptions in the ONC Cures Act Final Rule, ''failure to meet the conditions of an exception does not automatically mean a practice constitutes information blocking'' (85 FR 25649).[32] Although we encourage actors to voluntarily conform their practices to the conditions of an exception suited to the practice and its purpose, an actor's choice to do so simply provides them an enhanced level of assurance that the practices do not meet the definition of information blocking. If subject to an investigation by OIG, each practice that implicates the information blocking provision would be analyzed on a case-by-case basis (*see, e.g.,* 85 FR 25842). Each information blocking case, and whether the actor's practice would meet all conditions of an exception, will depend on its own unique facts and circumstances (85 FR 25868). We refer any party interested in a short, easy-to-read explanation of how any claim or report of information blocking would be evaluated to the following FAQ available on ASTP/ONC's website, HealthIT.gov: ''How would any claim or report of information blocking be evaluated?'' [33]

2. Infeasibility Exception Updates

In the ONC Cures Act Final Rule, we established the Infeasibility Exception (§ 171.204) (85 FR 25865 through 25870, and 85 FR 25958). Under the Infeasibility Exception, it is not considered information blocking if an actor, as defined in § 171.102, does not fulfill a request to access, exchange, or use EHI due to the infeasibility of the request, provided the actor satisfies the § 171.204(b) *responding to requests* condition and any one of the conditions in § 171.204(a).

In the HTI–1 Final Rule (89 FR 1373 through 1387 and 1436), we finalized the following revisions to § 171.204:

- clarification of the § 171.204(a)(1) *uncontrollable events* condition requirement that the uncontrollable event must have an actual negative impact on an actor's ability to fulfill EHI access, exchange, or use in order for *uncontrollable events* condition to apply;
- addition of two new conditions (*third party seeking modification use* and *manner exception exhausted,* respectively subparagraphs (3) and (4)) under paragraph (a); and
- renumbering the *infeasible under the circumstances* condition from § 171.204(a)(3) to § 171.204(a)(5).

However, in the HTI–1 rulemaking, we did not change the substance of the *infeasible under the circumstances* condition (now codified in § 171.204(a)(5)) or the § 171.204(a)(2) *segmentation* condition, and we did not make any changes to § 171.204(b). In the HTI–2 Proposed Rule (89 FR 63623), we proposed to modify:

- the § 171.204(a)(2) *segmentation* condition as described in the HTI–2 Proposed Rule (89 FR 63623 through 63624);
- the § 171.204(a)(3) *third party seeking modification use* condition as described in the HTI–2 Proposed Rule (89 FR 63624 through 63625); and
- the § 171.204(b) *responding to requests* condition as discussed in the HTI–2 Proposed Rule (89 FR 63625 through 63627).

In this final rule, we have finalized modifications to the § 171.204(a)(2) *segmentation* condition of the Infeasibility Exception. We do not address in this final rule our HTI–2 Proposed Rule proposals to revise § 171.204(a)(3) and (b). We may address in a future final rule revisions to the Infeasibility Exception that we do not address in this final rule.

In the HTI–2 Proposed Rule, we explained that the § 171.204(a)(2) *segmentation* condition applies where the actor is not able to fulfill a request for access, exchange, or use of EHI specifically because the actor cannot unambiguously segment from other requested EHI the EHI that cannot be made available by law or due to an individual's preference, or that may be withheld in accordance with § 171.201 (89 FR 63623). We noted that in practice, ''by law or due to an individual's preference'' would include situations where: an actor has chosen to honor an individual's request for restrictions on sharing of some of the individual's EHI; an individual's authorization or consent is a pre-requisite for a particular use or disclosure of the individual's EHI to be lawful and the individual has not provided such authorization or consent; or law applicable in the circumstances of the request restricts sharing of the individual's EHI.

In the HTI–2 Proposed Rule (89 FR 63623 through 63624), we proposed updates to the *segmentation* condition to enhance clarity and certainty, and to provide for its application to additional situations. We proposed to update how the text of § 171.204(a)(2) describes why certain EHI cannot or will not be made available, including more specific cross-

[31] For example, an actor that is subject to the HIPAA Privacy Rule is required to agree to an individual's requested restriction on use or disclosure of PHI where 45 CFR 164.522(a)(1)(ii) and (vi) apply. (As noted earlier in this discussion, where that is the case and the PHI is also EHI, the actor's agreeing to and applying such restrictions we would consider to be ''required by law.'')

[32] *See also, e.g.,* IB.FAQ29.2.2024APR: ''If an actor does not fulfill a request for access, exchange, and use of EHI in ''any manner requested'' that they have the technical capability to support, is the actor automatically an information blocker unless they satisfy at least one of the information blocking exceptions?''

[33] IB.FAQ46.1.2022FEB, FAQ-specific URL: *https://www.healthit.gov/faq/how-would-any-claim-or-report-information-blocking-be-evaluated.*

references to relevant provisions within 45 CFR part 171.

In the HTI–2 Proposed Rule (89 FR 63623), we noted that the *segmentation* condition references EHI that cannot be made available due to an individual's preference or by law in § 171.204(a)(2)(i), and EHI that the actor may choose to withhold in accordance with the Preventing Harm Exception in § 171.204(a)(2)(ii). We proposed to revise the condition (§ 171.204(a)(2)) as follows: to focus subparagraph (i) on EHI that is not permitted by applicable law to be made available, and to explicitly cross-reference in subparagraph (ii) the proposed Protecting Care Access Exception (§ 171.206) and the existing Privacy Exception (§ 171.202) in addition to the existing Preventing Harm Exception (§ 171.201) (which currently has an explicit cross-reference).

We stated that focusing § 171.204(a)(2)(i) solely on EHI that an actor is not permitted by applicable law to make available for a requested access, exchange, or use will reinforce for actors and other interested persons that actors cannot make EHI available when applicable law, such as the HIPAA Privacy Rule or 42 CFR part 2, does not permit covered information to be made available (89 FR 63623). Under the revision we proposed of § 171.204(a)(2)(i), the *segmentation* condition would continue to apply as it does today when an actor cannot unambiguously segment EHI that, under applicable law, is permitted to be available to a particular person for a particular purpose from EHI that is not permitted to be available to that person for that purpose. We noted in the HTI–2 Proposed Rule that this would include situations where the actor cannot unambiguously segment EHI for which preconditions for permitting use or disclosure under the HIPAA Privacy Rule (or other applicable law) have not been met from EHI for which such preconditions have been met, as well as scenarios where use or disclosure of specific EHI for a particular purpose is prohibited by applicable law (89 FR 63623).

We explained that the proposed revision to § 171.204(a)(2) would retain in subparagraph (ii) the explicit reference to the Preventing Harm Exception (§ 171.201). Thus, we noted that the Infeasibility Exception's revised *segmentation* condition would continue to apply where the actor cannot unambiguously segment other EHI from EHI that the actor has chosen to withhold in accordance with the Preventing Harm Exception (§ 171.201) (89 FR 63623).

We proposed to explicitly add reference to § 171.202 in our revision to subparagraph (ii) of § 171.204(a)(2) in order to ensure that the *segmentation* condition would continue to apply in scenarios where the actor cannot unambiguously segment other EHI they could lawfully make available from the EHI that the actor has chosen to honor the individual's request not to share (consistent with § 171.202(e) sub-exception). In addition, we noted that citing § 171.202 in the proposed revision to subparagraph (ii) of § 171.204(a)(2) would expand explicit application of the § 171.204(a)(2) *segmentation* condition to certain situations where an actor subject to multiple laws with inconsistent preconditions adopts uniform privacy policies and procedures to adopt the more restrictive preconditions (as provided for under the Privacy sub-exception Precondition Not Satisfied, see § 171.202(b)(3) as currently codified). We explained that by referencing all of the Privacy Exception (§ 171.202), the proposed revision to § 171.204(a)(2)(ii) would allow the Infeasibility Exception's *segmentation* condition to apply in scenarios where an actor has adopted the more restrictive of multiple laws' preconditions for sharing of some information about an individual's health or care consistent with § 171.202(b). Specifically, the condition would apply when such an actor cannot unambiguously segment EHI for which a more restrictive precondition has not been met from other EHI that the actor could lawfully share in jurisdictions with less restrictive preconditions.

We also noted (89 FR 63623) that by referencing all of the Privacy Exception (§ 171.202), the proposed revision would extend the *segmentation* condition's coverage to situations where the actor is unable to unambiguously segment EHI that could be made available from specific EHI that the actor may choose to withhold from the individual or their (personal or legal) representative consistent with the § 171.202(d) Privacy sub-exception ''denial of individual access based on unreviewable grounds.''

In the HTI–2 Proposed Rule (89 FR 63623 and 63624), we identified a possibility that individuals and interested parties could be concerned that extending the *segmentation* condition's coverage could affect the speed with which actors move to adopt or improve segmentation capabilities. We noted that segmentation capabilities may need to be improved to sequester the EHI that may be withheld from an individual on certain unreviewable grounds from *other* EHI an actor may have for that individual. For instance, we explained that in comparison to health information that may need to be sequestered for other reasons, different or additional segmentation functionality may be needed to sequester from other EHI only that information created or obtained in the course of research that includes treatment and only for as long as the research is in progress (89 FR 63624).[34] We noted that while the actor that is a HIPAA covered entity would still need to satisfy the individual's right of access to other PHI to the extent possible (see 45 CFR 164.524(d)(1)), the form and format in which the PHI is readily producible (see 45 CFR 164.524(c)(2)) may not be supported by the same electronic manner of access, exchange, or use that the individual would prefer. Therefore, we invited commenters to share any concerns or other perspectives they may wish to share relevant to this issue. We also proposed in the alternative to reference only Privacy Exception sub-exceptions *other than* denial of access based on unreviewable grounds (§ 171.202(d)) in the revised § 171.204(a)(2) *segmentation* condition. We noted that including this alternative proposal in the HTI–2 Proposed Rule meant we could decide to finalize the revision to the § 171.204(a)(2) *segmentation* condition with or without cross-reference to (or that would include) ''denial of access based on unreviewable grounds'' (§ 171.202(d)).

We noted (89 FR 63624) that for an actor's practice to be consistent with the § 171.202 Privacy Exception, the practice must meet the requirements set forth in any one of the sub-exceptions enumerated in § 171.202(b) through (e). We explained that referencing the entirety of § 171.202 in § 171.204(a)(2)(ii) would, therefore, also extend application of the Infeasibility Exception's *segmentation* condition to situations where a health IT developer of certified health IT that is not required to comply with the HIPAA Privacy Rule may withhold EHI they could otherwise lawfully make available based on an organizational privacy policy consistent with the § 171.202(c) sub-exception. (As used in § 171.202, ''HIPAA Privacy Rule'' means 45 CFR parts 160 and 164 (§ 171.202(a)(1).)

We noted that because the § 171.202(c) sub-exception is applicable only where a health IT developer of certified health IT is not required to

[34] Please *see* 45 CFR 164.524(a)(2)(iii) for the HIPAA Privacy Rule's full ''unreviewable grounds for denial'' circumstances to which this example alludes.

comply with the HIPAA Privacy Rule, it would apply in situations where the health IT developer of certified health IT is not required to comply with the individual right of access in 45 CFR 164.524. We stated that we believe it is possible that some individuals might seek health care or other services from such developers' customers (including health care providers) who are not HIPAA covered entities. We noted that in such situations, a State or Tribal law may operate to provide the individual a right to access their health information that the actor has.[35] We explained that although the number of such situations may be relatively small, we do recognize it is possible for some individuals to find themselves in situations where no other law explicitly guarantees them a right to access EHI of which the individual is the subject (or the legal representative of the subject). We noted that in such situations, the individual may rely solely on the information blocking statute to ensure actors will not unreasonably and unnecessarily interfere with the individual's EHI access, exchange, or use. We requested comments about potential unintended consequences of extending the (§ 171.204(a)(2)) *segmentation* condition to situations where a health IT developer is not required to comply with HIPAA and cannot segment EHI they have *chosen* to withhold consistent with the actor's own organizational privacy policies from other EHI. We also asked if extending the *segmentation* condition to situations where a health IT developer has chosen to withhold EHI consistent with the Privacy sub-exception ''health IT developer of certified health IT not covered by HIPAA'' (§ 171.202(c)) pose too much risk of such developers avoiding individuals' EHI requests by choosing not to develop segmentation capabilities in the health IT they provide their customers who are not HIPAA covered entities. We also included an alternative proposal to reference in the revised § 171.204(a)(2)(ii) *segmentation* condition only the Privacy Exception sub-exceptions *other than* § 171.202(c) ''health IT developer of certified health IT not covered by HIPAA'' sub-exception (89 FR 63624).

We noted that as discussed in the HTI–2 Proposed Rule (89 FR 63624), the § 171.206 Protecting Care Access Exception would apply to practices that an actor chooses to implement that are likely to interfere with access, exchange, or use of specific EHI (including, but not limited to, withholding such EHI) when relevant conditions are met. We proposed to reference § 171.206 in the revised § 171.204(a)(2)(ii) because the proposed § 171.206(a) *threshold* condition's requirements include (among others) a requirement that the actor's practice be no broader than necessary to reduce the risk of potential exposure of any person(s) to legal action that the actor believes could arise from the particular access, exchange, or use of the specific EHI. We noted that the actor's lack of technical capability to sequester only the EHI for which relevant conditions of § 171.206 have been satisfied would not render § 171.206 applicable to interference with the lawful access, exchange, or use of other EHI pertaining to the same individual(s). We explained that, therefore, proposed reference to § 171.206 in the proposed revised § 171.204(a)(2)(ii) would accommodate circumstances where an actor lacks the technical capability to unambiguously segment the EHI the actor has chosen to withhold consistent with the Protecting Care Access Exception (§ 171.206) from other EHI that they could lawfully make available.

In the HTI–2 Proposed Rule (89 FR 63624), we noted that the requirements for an actor's practice to satisfy the proposed new § 171.206 exception, including the § 171.206(a) *threshold* condition that would be relevant to any practice to which § 171.206 could apply as well as when the § 171.206(b) *patient protection* or § 171.206(c) *care access* conditions are relevant, were discussed in detail in the HTI–2 Proposed Rule preamble (89 FR 63627 through 63639). Similarly, we discuss comments received and the finalized requirements for the new § 171.206 exception in this final rule's preamble.

Comments. The majority of commenters supported our proposal to focus subparagraph (i) of § 171.204(a)(2)(i) *segmentation* condition to continue to apply to EHI that is not permitted by applicable law to be made available, stating that the proposed revision provides clarity and certainty for actors who choose to withhold certain patient EHI. Commenters also stated that the proposed revision reduces burden on actors when determining whether and which EHI may meet the Infeasibility Exception and mentioned that providers currently must use extensive time and resources to redact sensitive information before disclosure. Commenters expressed support for the proposal, asserting that the revision addresses technical health IT systems issues (*i.e.,* where systems do not have the capabilities to unambiguously segment EHI). Commenters further noted that our proposal would result in improved patient experience, engagement, and safety. Several commenters applauded ASTP/ONC for our proposal noting that it allows individuals more control over their health data.

Response. We thank commenters for their support and have finalized § 171.204(a)(2)(i) as proposed. Sub-paragraph (i) of the *segmentation* condition (§ 171.204(a)(2)) of the Infeasibility Exception (§ 171.204), as revised, focuses solely on EHI that is not permitted by applicable law to be made available for a requested access, exchange, or use.

Comment. We did not receive substantive feedback regarding our proposal to retain explicit cross-reference § 171.201 Preventing Harm Exception, now shown in subparagraph (ii) of § 171.204(a)(2).

Response. Therefore, we have finalized, as proposed, retention of the explicit cross-reference to § 171.201 Preventing Harm Exception in sub-paragraph (ii) of § 171.204. The § 171.204(a)(2) *segmentation* condition continues to apply where an actor cannot unambiguously segment other EHI from EHI that the actor has chosen to withhold in accordance with the Preventing Harm Exception (§ 171.201).

Comments. The majority of commenters strongly supported our proposal to explicitly add a cross-reference in § 171.204(a)(2)(ii) to the entirety of § 171.202 Privacy Exception, noting that it safeguards patient privacy and sensitive health information, enhances clarity and certainty, provides flexibility, reduces compliance burden on actors, and accounts for health IT system limitations until segmentation capabilities are more mature. Commenters commended ASTP/ONC for the proposal, noting that the provisions are a positive step that allow providers to prioritize caring for patients and will significantly improve patient and family experience, engagement, and safety.

Many commenters endorsed the proposal to expand the *segmentation* condition's coverage stating that it would lead to improved patient privacy and provided several examples of situations where health care providers are unable to segment granular health data. Some commenters specifically referenced the benefits of the proposal for health care providers who treat patients exposed to violence and who request to keep their sensitive information private. Commenters also noted that it would help patients with stigmatizing diagnoses keep their

[35] Determining what other laws may operate, or how, in specific circumstances is beyond the scope of this final rule.

information private. Another commenter pointed to their support for the proposed revised *segmentation* condition as it relates to the continued expansion of USCDI data elements and the implications on patient privacy and the potential harm of releasing sensitive information.

Commenters commended ASTP/ONC for the clarity and certainty that our proposal provides for actors to confidently withhold EHI without fear of an information blocking claim or risks of an information blocking determination. For example, one commenter noted that many laboratories do not have the technology to keep certain sensitive results separate, and this proposal would allow laboratories to confidently not share this data without fear of violating information blocking regulations. Commenters also stated that the proposal would have the benefit of providing additional necessary protections and assurances for health care providers who seek to not share a patient's EHI due to risks of an information blocking claim or determination. Commenters asserted that the proposal ensures that actors have clarity that use of exceptions to prevent the disclosure of specific EHI is not considered information blocking. One commenter noted that the proposal is especially helpful for health care providers who lack resources and access to more sophisticated health IT systems.

Many commenters stressed that current health IT systems cannot provide the level of segmentation that is required to safeguard patient data. Commenters specifically noted that health IT systems lack the necessary data segmentation capabilities to map to how Local, State, Federal, and Tribal health data privacy laws are written and cannot apply the variation on disclosure requirements. Commenters stressed that it is technically impossible for EHRs to segment EHI that is protected and treated differently by various privacy laws depending on the jurisdiction and circumstances. Many commenters who endorsed the proposal stated that the *segmentation* condition is necessary in the interim until technology that can separate and sequester sensitive data is available. Commenters stressed that the proposal ultimately eases the burden on actors, especially health care providers, associated with compliance with the information blocking regulations given there are factors outside of their control, like the limited segmentation capabilities in EHRs.

Some commenters specifically supported the proposal to reference the entirety of the Privacy Exception in the Infeasibility Exception's *segmentation* condition because it would expand the applicability of the *segmentation* condition to health IT developers of certified health IT that are not required to comply with the HIPAA Privacy Rule.

The majority of commenters recommended that we finalize subparagraph (ii) of the *segmentation* condition (§ 171.204(a)(2)) to cross-reference the entirety of the Privacy Exception as proposed.

Response. We thank commenters for their support to expand subparagraph (ii) of the *segmentation* condition (§ 171.204(a)(2)) to cross-reference the entirety of the Privacy Exception (§ 171.202). We also appreciate commenters concerns that technology does not currently have the capability to sequester EHI that is protected and treated differently by laws in various jurisdictions. In the HTI–2 Proposed Rule we noted the importance of data segmentation, our awareness of the limitations of current health IT capabilities for data segmentation and of external efforts to develop technical standards that over time may result in increasingly advanced data segmentation capabilities in EHR systems and other health IT, and the variability in heath IT products capabilities to segment data (89 FR 63634). We agree with commenters that revisions to the *segmentation* condition are necessary to provide for circumstances where an actor cannot sequester EHI from other EHI that is treated differently depending on the jurisdiction and circumstances. Therefore, after consideration of the comments and the strong support for the *segmentation* condition proposal to include the entirety of the § 171.202 Privacy Exception, we have finalized, as proposed, subparagraph (ii) of the *segmentation* condition (§ 171.204(a)) of the Infeasibility Exception to cross-reference the entirety of the Privacy Exception (§ 171.202)).

We discuss comments specific to cross-referencing § 171.202 Privacy Exception in the *segmentation* condition (§ 171.204(a)(2)(ii)) in more detail below.

Comments. No commenters supported our alternative proposal to reference the Privacy Exception sub-exceptions *other* than denial of access based on unreviewable grounds (§ 171.202(d)) in the revised § 171.204(a)(2) *segmentation* condition in response to our alternative proposal request for comment.

Response. We have not finalized the alternative proposal. We have finalized § 171.202(a)(2)(ii) to include a cross-reference to the entirety of § 171.202. By referencing all of the Privacy Exception (§ 171.202), the *segmentation* condition's coverage includes situations where the actor is unable to unambiguously segment EHI that could be made available from specific EHI that the actor may choose to withhold from the individual or their (personal or legal) representative consistent with the § 171.202(d) Privacy sub-exception ''denial of individual access based on unreviewable grounds.''

Comments. Some commenters supported our alternative proposal to reference in subparagraph (ii) of the revised *segmentation* condition (§ 171.204(a)(2)) the Privacy Exception sub-exceptions other than § 171.202(c) ''health IT developer of certified health IT not covered by HIPAA'' sub-exception instead of the entirety of § 171.202. Commenters expressed concern that expanding the application of the Infeasibility Exception's *segmentation* condition to situations where a health IT developer of certified health IT that is not required to comply with the HIPAA Privacy Rule could lead health IT vendors to abuse the Infeasibility Exception by inappropriately limiting the format, volume, and categories of health care data because they have deliberately designed their health IT system to limit shared data. Some commenters referred to the practice as ''infeasibility by design'' and urged ASTP/ONC to clarify that actors may not use the Infeasibility Exception's *segmentation* condition in this manner.

Some commenters expressed their concern that some organizations rely on the *segmentation* condition as a shield to not share EHI for purposes of business expediency instead of separating discrete data that an entity has requested for a legitimate business purpose. The commenters asserted that actors understand that segmentation capabilities are not available in most EHRs, and the *segmentation* condition provides a justification for not sharing EHI when sharing is legally permissible. One commenter expressed concerns with including the Privacy Exception sub-exceptions other than § 171.202(c) ''health IT developer of certified health IT not covered by HIPAA,'' yet acknowledged that the *segmentation* condition is necessary until more robust segmentation capabilities are available. The commenter stated that it was ''not clear how to provide the environment, incentives, and potential penalties'' to ameliorate the behavior of actors that abuse the *segmentation* condition.

Another commenter expressed concerns that including the § 171.202 Privacy Exception cross-reference in its entirety could inadvertently create challenges for third-party companies to

access and utilize patient data, and result in incentives to limit the development of health care solutions that could improve experiences for providers, patients, and payers.

Response. We thank commenters for their input addressing the alternative proposal. After consideration of the comments received, we have not adopted the alternative proposal. We have finalized the *segmentation* condition (§ 171.204(a)(2)) revision as proposed at 89 FR 63803.

We understand and appreciate commenters' concerns about expanding the *segmentation* condition to include an explicit cross-reference to the entirety of § 171.202 in § 171.204(a)(2), however we are not convinced that these concerns outweigh, at this point in time, the need for including a cross-reference to the entirety of Privacy Exception (§ 171.202) in the *segmentation* condition (§ 171.204(a)(2)(ii)). A large number of comments received in response to the proposals addressed in this final rule expressed concerns and stated it is a reality that many actors use health IT that cannot currently, due to technology limitations, unambiguously segment from other EHI the EHI that they must withhold under laws that apply to them or that they may choose to withhold in accordance with another information blocking exception (such as § 171.202(e), which is available to all actors). Adopting the cross-reference to the entirety of the Privacy Exception (§ 171.202) in the *segmentation* condition in § 171.204(a)(2), provides certainty and clarity for all actors that they can both avoid committing information blocking and protect individuals' privacy interests in accordance with the laws that apply to them—be those laws Federal, State, or Tribal—even if the actor that is unable to unambiguously segment their EHI is a health IT developer of certified health IT not covered by HIPAA. Finalizing the revisions to § 171.204(a)(2) as proposed (89 FR 63803) also avoids adding further complexity because it more precisely identifies for actors the practices that would not be considered information blocking without treating certain actors differently, thus the revisions do not create additional burden for health IT developers not covered by HIPAA that would not likewise apply to actors covered by HIPAA. Additionally, we are not persuaded that it is necessary to exclude non-covered actors in finalized § 171.204(a)(2)(ii), given the relatively small subset of actors and circumstances where the distinction between including or excluding § 171.202(c) from the cross-reference in § 171.204(a)(2)(ii) is likely relevant because the vast majority of health IT developers of certified health IT operate as business associates or covered entities under HIPAA. We agree with commenters that it is important to ensure that non-covered actors that offer products or services not regulated by the HIPAA Privacy Rule, and are still subject to the information blocking provisions, should have the ability to seek coverage under the provisions finalized in § 171.204(a)(2)(ii) due to the limitations of current segmentation capabilities in health IT.

We note, however, that any abuse of the *segmentation* condition of the Infeasibility Exception (or any component of any information blocking exception) would be of concern to ASTP/ONC, and we plan to continue monitoring for any signals that this may be occurring. We would anticipate taking appropriate educational, outreach, and (where applicable) enforcement steps in response to such signals and may consider future rulemaking, as necessary, to amend any provision in 45 CFR part 171 in response to changing market conditions.

We also plan to continue to engage with the health IT, standards, health care provider, and patient advocacy communities to encourage innovative approaches to development and implementation of more granular and interoperable segmentation capabilities. We encourage anyone who believes they may have experienced or observed information blocking by any health care provider, health IT developer of certified health IT, or HIN or HIE to share their concerns with us through the Information Blocking Portal on ASTP/ONC's website, *HealthIT.gov*. Information received by ASTP/ONC through the Information Blocking Portal as well as the Health IT Feedback and Inquiry Portal helps inform the development of resources we make publicly available on ASTP/ONC's website, *HealthIT.gov*.

Comments. A small number of commenters opposed our proposal to include the cross-reference in the *segmentation* condition (§ 171.204(a)(2)(ii)) to any sub-exception within the Privacy Exception (§ 171.202) because they believed ASTP/ONC could accomplish the same objectives by adding functionality or requirements similar to our proposed ''patient right to request a restriction on use or disclosure'' certification criterion requirement in the ONC Health IT Certification Program (Program). These commenters opposed any revisions to the Infeasibility Exception's *segmentation* condition in § 171.204(a)(2).

Response. We thank the commenters for their concerns and recommendation, but we did not propose changes to the ONC Health IT Certification Program related to segmentation capabilities in the HTI–2 Proposed Rule. The proposals related to actors lacking segmentation capabilities in the HTI–2 Proposed Rule are related to information blocking. These comments are out of scope of this final rule. In addition, we note that information blocking provisions are relevant where actors deploy a wide range of health IT beyond what is currently certified under the ONC Health IT Certification Program. We refer readers to the HTI–1 Final Rule (89 FR 1298 through 1305) for an explanation on our decision to decline adopting our proposal for a ''patient right to request a restriction on use or disclosure'' certification criterion in the Program, most notably because of limited developer capabilities to manage the complexities of every patient request and a lack of configured privacy and security systems for this data, which can lead to unintended consequences on patient data.

As mentioned above, we plan to continue to engage with the health IT, health care provider, and patient advocacy communities to encourage innovative approaches to development and implementation of more granular and interoperable segmentation capabilities.

Comments. Some commenters expressed support for expanding the *segmentation* condition to include the entirety of the Privacy Exception because it would protect the EHI of survivors of violence. Some commenters endorsed modifying the Infeasibility Exception's *segmentation* condition to explicitly account for circumstances where the provider cannot comply with a request without disclosing exposure to violence. One commenter expressed concern that clarifying the *segmentation* condition by adding a cross-reference to the Privacy Exception may not be adequate to address a patient's privacy concerns with respect to exposure to violence. The commenter claimed that due to the complexity of information blocking rules, health care providers do not understand or employ the existing *segmentation* condition or the currently codified Privacy Exception adequately, risking harm to the patient. The same commenter stated that our proposal is a step in the right direction regarding protecting sensitive medical information, but the commenter expressed concern that in practice, providers are not aware of how to apply the Privacy Exception and instead share private patient information in fear of

information blocking accusations. Commenters urged ASTP/ONC to clarify the information blocking requirements regarding releasing sensitive patient data in online portals as it relates to the Privacy Exception and the Infeasibility Exception's *segmentation* condition.

Response. We thank the commenters for their support and for bringing to our attention their concerns about health care providers not withholding EHI due to fear of information blocking accusations even when the Privacy Exception would apply if the actor chose to withhold some or all of the patient's EHI. In the HTI–2 Proposed Rule, we proposed to revise the § 171.202(e) Privacy sub-exception (89 FR 63622). We have finalized the § 171.202(e) revision in this rule. We believe the revision will make it easier for actors to feel confident in their ability to satisfy the § 171.202(e) Privacy sub-exception if the actor chooses to honor an individual's request not to share EHI. The Privacy sub-exception ''individual's request not to share EHI'' (§ 171.202(e)) is agnostic as to why the individual wants to restrict sharing of their EHI, and as to what topics or other subset of their EHI the individual might ask an actor not to share. Thus, § 171.202(e) is not limited to situations where an individual asks an actor not to share information about the individual's exposure to violence, but it would apply where the individual requests that the actor not share that information.

We are aware that adding a cross-reference in § 171.204(a)(2)(ii) to the entirety of § 171.202 does not expand the Privacy Exception's coverage for an actor's electing to withhold exposure to violence or other information that an actor may consider sensitive where none of the sub-exceptions in § 171.202(b), (c), (d), or (e) is applicable. We did not propose in the HTI–2 Proposed Rule such an expansion of the Privacy Exception, nor of any other exception. Where no applicable law requires, and no other exception applies to an actor's choosing to, withhold EHI indicating exposure to violence from access, exchange, or use permitted by applicable law, the Infeasibility Exception's *segmentation* condition will not operate to cover the actor's withholding of such EHI or of other EHI that the actor may be unable to unambiguously segment from it. We did not propose in the HTI–2 Proposed Rule to modify § 171.204(a)(2) so that it could operate in such a manner. Therefore, any expansion of the Infeasibility Exception or another exception to cover actors' electing to withhold EHI indicating exposure to violence or other EHI on the basis that the actor finds it to be sensitive would be beyond the scope of this rule (or another final rule addressing any other proposals made in the HTI–2 Proposed Rule). We refer commenters and other interested parties to 45 CFR part 171 for the full conditions of all information blocking exceptions, and to ASTP/ONC's official website, *HealthIT.gov*, for the array of resources (such as FAQs, fact sheets, and webinars) we have published about information blocking exceptions. As additional resources become available, including for the newly finalized Protecting Care Access Exception, we anticipate making them available at *HealthIT.gov*.

We note that some actors may operate under one or more laws that restrict information about individuals' exposure to violence in ways that the HIPAA Privacy Rule does not. We also appreciate the opportunity these commenters have provided us to remind all actors that where applicable law prohibits a specific access, exchange, or use of information, complying with such laws is ''required by law'' for purposes of the information blocking regulations. Practices that are ''required by law'' are not considered ''information blocking'' (see, for example, 89 FR 1351 and 85 FR 25794). As we noted in the HTI–2 Proposed Rule (89 FR 63623 through 63624), focusing subparagraph (i) of § 171.204(a)(2) solely on EHI that applicable law prohibits an actor from making available for a requested access, exchange, or use will reinforce for actors and other interested persons that actors cannot make EHI available when applicable law prohibits the actor from making covered information available.

We also appreciate the opportunity to remind readers of our continued commitment to support EHI sharing consistent with patient preferences and applicable law. Whether received through the public comments process for a proposed rule or through informal channels, the feedback, and questions we receive are appreciated and help to inform our development of information resources that we make publicly available on *HealthIT.gov*. Informal channels include, for example, the Health IT Feedback and Inquiry Portal that is available year-round and not tied to the comment period for a proposed rule. To find the portal, please click, paste, or search *https://www.healthit.gov/feedback.*

Comment. One commenter urged ASTP/ONC to exercise caution as it considers policies about segmenting patient data that could be necessary to provide patient care. The commenter expressed concerns over the potential for patient harm with competing State and Federal laws and regulations and noted that segmentation could lead to incomplete clinical information.

Response. We thank the commenter for their perspective. As we have stated, all information blocking exceptions are voluntary; the existence of an exception that could apply to an actor's choice to withhold EHI from access, exchange, or use under the exception's conditions is not intended to create an affirmative obligation that any actor do so. For example, if an actor believes that withholding EHI in accordance with the Preventing Harm Exception (§ 171.201) would in fact create more risk to the patient than would be prevented—either by application of § 171.201 alone or in combination with the Infeasibility Exception due to the actor's lack of segmentation capabilities—then we presume the actor would not choose to withhold the EHI just because an exception (or combination of exceptions) exists that could apply if the actor did choose to withhold the EHI.

We recognize that the landscape of Federal, State, and (where applicable) Tribal laws that affect when sharing patient health information is not permitted, conditionally permissible, permitted, or required is complex. Resolving that complexity would be beyond the scope of this final rule. We plan to continue working with the health care, health IT, patients, and privacy advocate communities in the hopes of encouraging innovation that will advance availability and use of increasingly granular, interoperable, and flexible data segmentation capabilities to help actors safeguard patients' privacy interests and comply with various applicable laws while optimizing data sharing to promote care coordination, safety, and quality.

Comment. One commenter acknowledged their support for the overall intent of the proposal but stated that ASTP/ONC should leave the definition as described in the HIPAA policy. The commenter recommended that ASTP/ONC clarify this definition to fit ''the TEFCA rule.''

Response. It is unclear to us which specific HIPAA definition the commenter is referring to and therefore it is not clear how they may have envisioned us incorporating such a description into the *segmentation* condition (§ 171.204(a)(2)). It is also not clear from the comment what the commenter was referring to as ''the TEFCA rule'' or how they intended to suggest the infeasibility exception might, in the commenter's view, better align with whatever aspect of TEFCA the commenter may have intended to reference. We could interpret the

comment as suggesting that ASTP/ONC should finalize our proposed revisions to the *segmentation* condition of the Infeasibility Exception because the prior references in § 171.204(a)(2)(i) and (ii) (before this final rule) may have, in the commenter's assessment, not made it as easy for an actor to know when the *segmentation* condition would apply to a specific situation. We would agree that the original scope of § 171.204(a)(2)(i) and (ii) can be presented in a way that is easier to read, and to that end we proposed the improved wording and structure of § 171.204 in the HTI–2 Proposed Rule alongside the proposal to reference all of the Privacy Exception and the new Protecting Care Access Exception.

In light of the ambiguity of the comment, we note that information blocking regulations are issued under separate statutory authority from HIPAA regulations and TEFCA. We work to ensure the regulations do not conflict with one another and align requirements where practical given the different purpose and function of the information blocking regulations in comparison to the HIPAA Privacy Rule or TEFCA.

Additionally, we do not define terms, nor did we propose to define terms in the *segmentation* condition (§ 171.204(a)). The proposed (and finalized) subparagraph (ii) of the *segmentation* condition (§ 171.204(a)(2)(ii) adds the cross-reference to § 171.202 where we define the term ''HIPAA Privacy Rule.'' As noted in the HTI–2 Proposed Rule (89 FR 63624), the HIPAA Privacy Rule definition in § 171.202(a)(1), as used in § 171.202, ''HIPAA Privacy Rule'' means 45 CFR parts 160 and 164 (§ 171.202(a)(1)). Given the ambiguity of the comment and our interpretation, we decline to consider aligning the definition in § 171.202(a)(1) to other definitions discussed in the HTI–2 Proposed Rule.

Comments. In general, commenters expressed strong support to expand explicit application of the *segmentation* condition to the Privacy Exception to account for certain situations where an actor is subject to multiple laws with conflicting or inconsistent pre-conditions, noting that it provides clarity and is helpful. Commenters expressed appreciation for the expansion because it allows providers to enact uniform policies that outline their inability to segment data, and justify their nondisclosure, allowing providers to prioritize the important work of caring for patients.

Response. We thank commenters for their support and have finalized, as proposed, § 171.204(a)(2)(ii).

Comments. A few commenters seemed to misinterpret our proposal to expand the *segmentation* condition, as well as the existing codified requirements of the *segmentation* condition in § 171.204(a)(2) that we did not propose to revise in the HTI–2 Proposed Rule. Commenters cited the OCR ''Privacy Rule to Support Reproductive Health Care Privacy'' Final Rule's valid attestation requirements as a pre-condition that must be satisfied by the health care provider before disclosing specific EHI. The commenters suggested that the proposed revised *segmentation* condition would now apply if a physician does not receive a valid attestation, and it would allow the physician or their EHR developer to withhold most of the medical record if prohibited from sharing specific EHI based on OCR, State, or other privacy regulations.

Response. As discussed above, the expanded *segmentation* condition applies where an actor has adopted the more restrictive of multiple laws' preconditions for sharing of some information about an individual's health or care consistent with § 171.202(b) but cannot unambiguously segment EHI for which a more restrictive precondition has not been met from other EHI that the actor could lawfully share in the jurisdictions with less restrictive preconditions. We refer readers to the HTI–2 Proposed Rule (89 FR 63627 through 63642) for a discussion of the new Protecting Care Access Exception (§ 171.206) and alignment with the 2024 HIPAA Privacy Rule.

Comments. Commenters had differing views on whether expanding the *segmentation* condition's coverage could affect the speed with which actors move to adopt or improve segmentation capabilities. Most commenters stated that expanding the *segmentation* condition's coverage would not discourage health IT developers from developing segmentation capabilities or health care providers from adopting the technology. Several commenters stated that including the entirety of § 171.202 would not cause a delay in development or adoption of segmentation capabilities. Commenters noted that health care providers would welcome the technology and acknowledged that some heath IT developers are working to improve segmentation capabilities, but that the availability of the *segmentation* condition is necessary in the interim until health IT capabilities mature. Commenters stated that the § 171.204(a)(2)(ii) *segmentation* condition would improve interoperability, and in turn patient safety and privacy, until health IT capabilities fully support more granular segmentation.

One commenter suggested that ASTP/ONC should not be concerned if the expanded *segmentation* condition disincentivizes the development of data segmentation capabilities because there are other policy avenues to address these concerns, notably through certification criteria requirements and Centers for Medicare & Medicaid Services (CMS) regulations that incorporate by reference the technical standards needed for segmentation. The commenter believed that addressing these concerns through other federal regulations would lead to speedier adoption of segmentation capabilities. The commenter further stated that the interests of interoperability are not advanced by denying actors—particularly those that do not develop or control the health technologies—the protection of the *segmentation* condition given the realities of current health IT capabilities and third-party payer systems.

However, some commenters expressed concerns that expanding the *segmentation* condition's coverage would encourage the health IT industry to delay development and adoption of robust segmentation capabilities at the peril of promoting interoperability and possibly patient safety. One commenter stated that the expansion would result in incentives to limit the development of health care solutions that could improve experiences for providers, patients, and payers. Another commenter stated that the entire health IT industry is delaying the development of segmentation capabilities, regardless of whether a health IT developer is required to comply with the HIPAA Privacy Rule.

Response. We thank commenters for their suggestions and insights in responding to our question on the expansion of the Infeasibility Exception's *segmentation* condition in § 171.204(a)(2)(ii) and whether there are potential effects on the speed with which actors move to adopt or improve segmentation capabilities. As commenters noted, the health IT that is currently available cannot easily sequester granular data. To the extent that adopting the expanded *segmentation* condition's coverage does or does not affect the speed with which actors move to adopt or improve segmentation capabilities, we agree that the availability of the *segmentation* condition is necessary, at this time,

until health IT capabilities mature, and more interoperable and granular segmentation capabilities improve. We recognize the need to promote interoperability, but we also consider patient privacy and safety when promoting interoperability. We thank commenters for sharing their thoughts on how the Infeasibility Exception's *segmentation* condition provides an interim solution for actors to limit sharing sensitive EHI without violating the information blocking regulations.

We appreciate the commenter's observations that policy development and requirements in other Federal programs could encourage the development of data segmentation capabilities and that our proposal would not disincentivize these developments. As stated, we plan to continue to engage with the health IT, standards, health care provider, and patient advocacy communities, as well as our Federal partners, to encourage innovative approaches to development and implementation of more granular and interoperable segmentation capabilities. We will continue to monitor and analyze approaches by health IT developers for real world implementation of segmentation capabilities and the adoption of the technology by health care providers.

Comment. One commenter urged ASTP/ONC to examine how it can spur action to respond to growing threats to patient privacy, the patient-physician relationship, and patient and clinician safety.

Response. Although the comment is beyond the scope of this final rule, we thank the commenter for sharing their thoughts. We recognize these topics are important to patients, physicians, other clinicians, and the health care system as a whole. ASTP/ONC plans to continue our efforts to foster development of a nationwide health IT infrastructure in a manner consistent with, among other important goals, improving health care quality, reducing medical errors, reducing health disparities, and advancing the delivery of patient-centered medical care while ensuring that each patient's health information is secure and protected in accordance with applicable law. As we mention above, whether received through the public comments process for a proposed rule or through informal channels, the feedback, and questions we receive are appreciated and help to inform our development of information resources that we make publicly available on *HealthIT.gov.* Informal channels include, for example, the Health IT Feedback and Inquiry Portal that is available year-round and not tied to the comment period for a proposed rule. To find the portal, please click, paste, or search *https://www.healthit.gov/feedback.*

Comments. We received several comments requesting that we clarify how or where the HTI–2 Proposed Rule treats an actor that is a covered entity differently than an actor that is not a covered entity.

Response. As we previously noted in our discussion of the Privacy Exception in this final rule, it is not clear whether these comments refer to all or only some of the information blocking enhancement proposals in the HTI–2 Proposed Rule (89 FR 63498). With respect to our proposals regarding the Infeasibility Exception, the proposal in § 171.204(a)(2)(ii) expands the application of the Infeasibility Exception's *segmentation* condition to all situations where an actor is unable to segment EHI from other requested EHI that the actor has chosen to withhold consistent with the Privacy Exception (§ 171.202) or Protecting Care Access Exception (§ 171.206). The information an actor is prohibited by applicable law from making available may vary based on what laws, including the HIPAA Privacy Rule, do or do not apply to the actor. However, the Infeasibility Exception's *segmentation* condition does not have different requirements based on whether an actor must also comply with the HIPAA Privacy Rule.

Because the finalized *segmentation* condition (§ 171.204(a)(2)) adds a cross-reference to the entirety of the Privacy Exception, we remind readers that the § 171.202(e) sub-exception's alignment with the individual's right under the HIPAA Privacy Rule to request restrictions does not limit the sub-exception's availability to actors who are also subject to the HIPAA Privacy Rule's requirements (89 FR 1353). We refer readers to the HTI–2 Proposed Rule (89 FR 63620 through 63622) for further discussion of the Privacy sub-exception ''individual's request not to share EHI'' (§ 171.202(e)).

Comments. Commenters commended ASTP/ONC for expanding the *segmentation* condition to specifically cross-reference the proposed Protecting Care Access Exception in § 171.206 noting that it logically aligns with the cross-reference in § 171.204(a)(ii) to § 171.201 and the proposed cross-reference to § 171.202. Commenters noted that the reference to the Protecting Care Access Exception in the *segmentation* condition of § 171.204(a)(2)(ii) is a positive revision because it allows actors to consider segmentation limitations when evaluating whether the withholding of reproductive health information was properly tailored. Commenters stated that it is technically difficult for health care providers to fulfill requests without sharing protected reproductive health information, making it necessary for the new Protecting Care Access Exception cross-reference in the Infeasibility Exception's *segmentation* condition. Commenters appreciated the flexibility the proposal provides for health care providers declining to share reproductive health information without facing information blocking consequences. Commenters stated that ASTP/ONC should not penalize health care providers for honoring patients' preferences to refrain from sharing EHI or to withhold EHI that could expose patients to legal consequences for receiving lawful reproductive care when segmentation of that data is not feasible.

Response. We thank commenters for their support and have finalized, as proposed, the cross-reference to the Protecting Care Access Exception (§ 171.206) in the subparagraph (ii) of the *segmentation* condition of the Infeasibility Exception (§ 171.204(a)(2)(ii)).

We explained in the HTI–2 Proposed Rule (89 FR 63624) that the § 171.206 Protecting Care Access Exception applies to practices that an actor chooses to implement that are likely to interfere with access, exchange, or use of specific EHI (including, but not limited to, withholding such EHI) when relevant conditions are met. We have finalized the cross-reference to the Protecting Care Access Exception (§ 171.206) in the *segmentation* condition (§ 171.204(a)(2)(ii)) because the finalized § 171.206(a) *threshold* condition's requirements include (among others) a requirement that the actor's practice be no broader than necessary to reduce the risk of potential exposure of any person(s) to legal action that the actor believes could arise from the particular access, exchange, or use of the specific EHI. The actor's lack of technical capability to sequester only the EHI for which relevant conditions of § 171.206 have been satisfied does not render § 171.206 applicable to interference with the lawful access, exchange, or use of other EHI pertaining to the same individual(s). Therefore, the reference to § 171.206 in the finalized § 171.204(a)(2)(ii) accommodates circumstances where an actor lacks the technical capability to unambiguously segment the EHI the actor has chosen to withhold consistent with the finalized Protecting Care Access Exception (§ 171.206) from other EHI that they could lawfully make available. The

requirements for an actor's practice to satisfy the new finalized Protecting Care Access Exception (§ 171.206), including the § 171.206(a) *threshold* condition that is relevant to any practice to which § 171.206 could apply as well as when the § 171.206(b) *patient protection* or § 171.206(c) *care access* conditions are relevant, are discussed in detail in the HTI–2 Proposed Rule (89 FR 63633 through 63638).

3. New Protecting Care Access Exception

a. Background and Purpose

As we explained in the ONC Cures Act Final Rule, the information blocking provision in PHSA section 3022 was enacted in response to concerns about practices that ''unreasonably limit the availability and use of electronic health information (EHI) for authorized and permitted purposes'' because such practices ''undermine public and private sector investments in the nation's health IT infrastructure, and frustrate efforts to use modern technologies to improve health care quality and efficiency, accelerate research and innovation, and provide greater value and choice to health care consumers'' (85 FR 25790). We also noted in the ONC Cures Act Final Rule that research suggests that information blocking practices ''weaken competition among health care providers by limiting patient mobility'' and that the information blocking provision of the 21st Century Cures Act works to deter practices that ''unnecessarily impede the flow of EHI or its use to improve health and the delivery of care'' (85 FR 25791). As required by section 3022(a)(3) of the PHSA, we recognized that certain reasonable and necessary activities that could otherwise meet the definition of information blocking should not be considered information blocking, and therefore, established the initial eight ''exceptions'' to the definition of information blocking (see 45 CFR 171 Subpart B and C; a ninth exception was established by the HTI–1 Final Rule in Subpart D (89 FR 1437)). Each reasonable and necessary activity identified as an exception to the information blocking definition does not constitute information blocking for purposes of section 3022(a)(1) of the PHSA if the conditions of the exception are met (85 FR 25649).

Between when the first eight regulatory exceptions to the information blocking definition were finalized in 2020 and the proposal of the Protecting Care Access Exception in the HTI–2 Proposed Rule (89 FR 63627 through 63639 and 63804), the legal landscape had changed significantly for many patients seeking, and for health care providers providing, reproductive health care. In the wake of the decision in *Dobbs* v. *Jackson Women's Health Organization,* 597 U.S. 215 (2022) decision, some states have newly enacted or are newly enforcing restrictions on access to reproductive health care. Uncertainties and other concerns that people who seek reproductive health care and people who provide or facilitate that care have about the legal landscape in the wake of the Supreme Court's ruling—and subsequent state restrictions on reproductive health care—have had far-reaching implications for health care beyond access to abortion. The changing legal landscape increases the likelihood that a patient's EHI may be disclosed in ways that erode trust in health care providers and the health care system, ultimately chilling an individual's willingness to seek, or other persons' willingness to provide or facilitate, lawful health care as well as individuals' willingness to provide full information to their health care providers.

As noted in the HTI–2 Proposed Rule (89 FR 63627), a person's ability to access care of any kind depends on a variety of factors including whether the care is available. For health care to be available, licensed health care professionals and health care facilities must be willing to provide it—and people other than the licensed health care professionals must be willing to take on various roles essential to delivering care in this modern, technology-enabled environment. Also, patients' access to care may rely in part on services or supports from other persons, such as a spouse, partner, or friend.

In the current legal environment, various jurisdictions are enforcing laws, or contemplating legislation, that purports to authorize administrative, civil, or criminal legal action against persons who engage in reproductive health care that is required or authorized by Federal law or that is permitted by the law of the jurisdiction where the care is provided. Fear of being investigated or of having to defend themselves against potential legal liability under such laws, even where the health care is lawful under the circumstances in which it was provided, may impact people's willingness to provide or assist in reproductive health care.

On April 26, 2024, OCR issued the 2024 HIPAA Privacy Rule to adopt a prohibition on the use or disclosure of PHI by an entity regulated under the HIPAA Privacy Rule, in certain circumstances, for the following purposes:

- To conduct a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care.
- To impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.
- To identify any person for any purpose described above.

As noted in the National Coordinator's May 13, 2024, blog post titled ''Supporting Information Privacy for Patients, Now and Always: Four Reminders of How HHS Information Blocking Regulations Recognize Privacy Rules,'' [36] on and after the 2024 HIPAA Privacy Rule's effective date, a HIPAA covered entity's or business associate's practice of denying a request for a use or disclosure of PHI where the use or disclosure is prohibited under that rule is excluded from the information blocking definition (45 CFR 171.103) because that denial is required by law. Therefore, the practice does not need to be covered by any information blocking exception because it is not considered information blocking.

As we noted in the HTI–2 Proposed Rule (89 FR 63628), the 2024 HIPAA Privacy Rule also established a requirement for HIPAA covered entities and business associates to obtain attestations prior to using or disclosing PHI potentially related to reproductive health care for certain purposes (see 45 CFR 164.509; 89 FR 33063). The Precondition Not Satisfied (45 CFR 171.202(b)) sub-exception of the information blocking Privacy Exception outlines a framework actors can follow so that the actors' practices of not fulfilling requests to access, exchange, or use EHI would not be considered information blocking when a precondition of applicable law has not been satisfied. By meeting the Precondition Not Satisfied sub-exception's requirements, the actor can have confidence that their practices of not sharing EHI because they have not obtained the required attestation will not be considered information blocking.[37]

[36] This HealthITbuzz blog post is available at *https://www.healthit.gov/buzz-blog/information-blocking/supporting-information-privacy-for-patients-now-and-always-four-reminders-of-how-hhs-information-blocking-regulations-recognize-privacy-rules.*

[37] We did not propose in the HTI–2 Proposed Rule, nor have we finalized in this final rule, any changes to the Privacy Exception's Precondition Not Satisfied sub-exception (§ 171.202(b)). As the

In preamble discussion of the background and purpose of the proposed Protecting Care Access Exception (89 FR 63628), we observed that the 2024 HIPAA Privacy Rule's new protections do not prohibit use or disclosure of PHI for various purposes other than those specified in 45 CFR 164.502(a)(5)(iii), although the protections include additional preconditions or limitations on disclosures for certain purposes (for more information, please see the 2024 HIPAA Privacy Rule (89 FR 32976) and consider visiting the *HHS.gov* Health Information Privacy section's HIPAA and Reproductive Health page: *https://www.hhs.gov/hipaa/for-professionals/special-topics/reproductive-health/index.html*). The 2024 HIPAA Privacy Rule does not require a HIPAA covered entity or business associate to obtain the attestations specified in 45 CFR 164.509 before disclosing PHI (including PHI potentially related to reproductive health care) for permissible purposes other than those specified in 45 CFR 164.512(d), (e), (f), or (g)(1). For example, the HIPAA Privacy Rule continues to allow uses and disclosures of PHI for treatment, payment, or health care operations purposes (see 45 CFR 164.506) that do not meet any of the prohibitions set out in 45 CFR 164.524(a)(5)(iii). Thus, an actor choosing to deny requests for access, exchange, or use of EHI for a purpose permitted under HIPAA could be implicating the information blocking definition unless another applicable law requires the denial, or another regulatory exception applies. Similarly, an actor conditioning fulfilment of such requests on preconditions that an actor chooses to set (such as that the requestor provides an attestation that is not required by any privacy law that applies in the circumstances) could implicate the information blocking definition unless an exception applies to that practice.

In the HTI–2 Proposed Rule (89 FR 63628), we provided a brief review of how the information blocking regulations, which are based on statutory authority separate from HIPAA, operate (independently of regulations promulgated under HIPAA). This background information is repeated here because it may help readers understand how and why an actor may be concerned about potentially implicating the information blocking definition (and civil monetary penalties or appropriate disincentives for information blocking authorized by the information blocking statute) if the actor engages in practices that the HIPAA Privacy Rule would require of a HIPAA covered entity or business associate when the actor is not required to comply with the HIPAA Privacy Rule.

First, information blocking regulations apply to health care providers, health IT developers of certified health IT, and health information networks (HIN) and health information exchanges (HIE), as each is defined in 45 CFR 171.102. Any individual or entity that meets one of these definitions is an ''actor'' and subject to the information blocking regulations in 45 CFR part 171, regardless of whether they are also a HIPAA covered entity or business associate as those terms are defined in 45 CFR 160.103. Second, for purposes of the information blocking regulations, the definition of ''EHI'' applies to information ''*regardless* of whether the group of records are used or maintained by or for a covered entity as defined in 45 CFR 160.103'' (§ 171.102, emphasis added). Therefore, it is possible for an information blocking actor that is not required to comply with the HIPAA Privacy Rule to have EHI that is not also PHI. It is also possible for an actor (such as a HIN/HIE) to not be a HIPAA covered entity itself and to exchange, maintain, or otherwise handle EHI on behalf of network participants that are not required to comply with the HIPAA Privacy Rule.

Where an actor that is not a HIPAA covered entity has EHI that is not maintained on behalf of a HIPAA covered entity, the actor may be concerned about potential information blocking consequences if the actor were to engage in a practice such as denying requests for access, exchange, or use of EHI that indicates or potentially relates to reproductive health care for purposes for which the 2024 HIPAA Privacy Rule would prohibit use or disclosure of PHI or would require an attestation as a precondition for permitting disclosure of PHI.

There is a sub-exception within the Privacy Exception currently codified in § 171.202(c) that is available to a health IT developer of certified health IT ''not covered by HIPAA.'' The sub-exception is available ''if the actor is a health IT developer of certified health IT that is not required to comply with the HIPAA Privacy Rule, when engaging in a practice that promotes the privacy interests of an individual'' (§ 171.202(c)). However, this exception represents a departure from our general approach of designing each information blocking exception to be available to all actors (regardless of whether they must comply with the HIPAA Privacy Rule). The § 171.202(c) sub-exception is also not available to actors who meet the § 171.102 definition of ''health care provider'' or ''HIN/HIE'' without meeting the ''health IT developer of certified health IT'' definition, even if they are not required to comply with the HIPAA Privacy Rule. (We refer actors and other persons interested in learning more about how the information blocking regulations, and particularly the exceptions, work in concert with the HIPAA Rules and other privacy laws to support health information privacy, to the discussion of this topic in the HTI–1 Final Rule at 89 FR 1351 through 1354.)

As we explained in the HTI–2 Proposed Rule (89 FR 63629), we understand that some health care providers and other actors may have concerns about the risk of potential exposure to legal action flowing from the uses and disclosures of EHI indicating or (in the case of patient health concern(s) or history) potentially relating to reproductive health care that remains permissible under applicable law. For example, the HIPAA Privacy Rule permits a HIPAA covered entity to disclose an individual's PHI to a health care provider who is not a HIPAA covered entity for treatment activities. Once PHI is in the possession, custody, or control of an entity that is not regulated under the HIPAA Privacy Rule, the information is no longer protected by the HIPAA Privacy Rule.

Thus, as we noted in the preamble discussion of the proposed Protecting Care Access Exception (89 FR 63629), the HIPAA Privacy Rule's strengthened protections for PHI would not preclude a health care provider (or other recipient of PHI for other permissible purposes) who is not a HIPAA covered entity or business associate from further disclosing individually identifiable health information to someone who might then use the information to potentially impose criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care (or any other care) that was lawful under the circumstances in which it was provided.

National Coordinator had reminded interested members of the public prior to HHS releasing the HTI–2 Proposed Rule: ''the information blocking regulations are designed to consider applicable law, including HIPAA rules.'' (Tripathi, M, ''Supporting Information Privacy for Patients, Now and Always: Four Reminders of How HHS Information Blocking Regulations Recognize Privacy Rules,'' HealthITbuzz blog dated May 13, 2024, available at: *https://www.healthit.gov/buzz-blog/information-blocking/supporting-information-privacy-for-patients-now-and-always-four-reminders-of-how-hhs-information-blocking-regulations-recognize-privacy-rules.*)

As we reiterated in the HTI–2 Proposed Rule (89 FR 63629), the information blocking statute is separate from the HIPAA statute and the information blocking regulations operate both separately and differently from the HIPAA regulations. One point of such difference that is key to understanding why we proposed a new ''Protecting Care Access Exception'' (§ 171.206) is that a HIPAA covered entity or business associate is not required by the HIPAA Privacy Rule to make a use or disclosure that the HIPAA Privacy Rule merely permits.[38] Actors subject to the information blocking regulations, however, could implicate the information blocking definition if they ''interfere with'' any access, exchange, or use of EHI except as required by law or covered by an exception. It is the implication of the ''information blocking'' definition (and the potential to incur penalties or disincentives for engaging in information blocking) that would cause an actor to be concerned about, for instance, refusing to disclose EHI indicating reproductive health care for permissible purposes to an entity not required to comply with the HIPAA Privacy Rule and whom the actor has reason to believe does not safeguard the privacy or security of individuals' health information in compliance with the same standards as would be required of a HIPAA covered entity or business associate.

In a variety of situations where a patient or an actor may be concerned that an access, exchange, or use of EHI may implicate any person's physical safety interests or the individual's privacy interests, other exceptions (such as the Preventing Harm Exception in § 171.201 or three of the four sub-exceptions of the Privacy Exception in § 171.202) have long been available to any actor who wants to engage in practices that are likely to interfere with EHI access, exchange, or use consistent with the conditions of the applicable exception. We noted this in the HTI–2 Proposed Rule (89 FR 63629) and emphasize again here that such other exceptions remain available to all actors. Each of the information blocking exceptions codified in subparts B, C, and D of 45 CFR part 171 applies under the conditions specified in the exception.

In the HTI–2 Proposed Rule (89 FR 63629), we noted that there were at that time no exceptions in 45 CFR part 171 designed to accommodate concerns an actor may have about a patient's, health care provider's, or other person's risk of potential exposure to legal action (investigation, action in court, or imposition of liability) that could arise from [39] the access, exchange, or use for permissible purposes specific EHI (that is, one or more data points) that indicates reproductive health care was sought, obtained, provided, or facilitated. None of the exceptions, we noted, were designed to accommodate similar concerns an actor may have about risk of patients' potential exposure to legal action that could arise from the sharing for permissible purposes of EHI that indicates health condition(s) or history for which reproductive health care is often sought, obtained, or medically indicated.[40] Thus, we explained that where preconditions (under the HIPAA Privacy Rule or other applicable law—or both, where applicable) to the provision of access, exchange, or use of EHI have been met, and another exception (such as the Privacy Exception (§ 171.202) or Preventing Harm Exception (§ 171.201)) does not apply, attempts to limit the disclosure of EHI for the purposes addressed in the *patient protection* or *care access* condition of the proposed Protecting Care Access Exception (§ 171.206(b) or (c)) could constitute information blocking (89 FR 63629). An actor's practice will only meet the statutory or regulatory definition of information blocking if it meets all of the definition's elements, including the knowledge standard applicable to the actor engaged in the practice.

Even for actors to whom the HIPAA Privacy Rule does not apply, other laws (Federal, State, or Tribal) may apply preconditions that must be satisfied in order for EHI to be shared without violating these laws. For any actor, compliance with such other applicable law does not implicate the information blocking definition, as discussed in the HTI–1 Final Rule preamble (see 89 FR 1351–1354) and in information resources available on ASTP/ONC's official website (*HealthIT.gov*). However, where the preconditions under such other applicable law are met, any practice by an actor that is likely to interfere with access, exchange, or use of EHI could implicate the information blocking definition (§ 171.103) unless the actor's practice is covered by an exception set forth in 45 CFR part 171.

In proposing the Protecting Care Access Exception (§ 171.206), we noted (89 FR 63629) that it would be available to any actor, regardless of whether the actor is also a HIPAA covered entity or business associate. The exception was proposed to apply regardless of whether another exception could also apply to an actor's practice(s) assuming that the applicable conditions were satisfied. Also, we noted in the HTI–2 Proposed Rule that other exceptions would continue to be available in circumstances where the conditions of the Protecting Care Access Exception cannot be met but the conditions of the other exception(s) can be met (89 FR 63629).

At the bottom of 89 FR 63629 (in the last column as printed in the **Federal Register**), the HTI–2 Proposed Rule included a reminder that each information blocking exception and each provision of each exception is designed to stand independent of any and every other exception unless, and to the extent that, any specific provision of an exception explicitly references another exception. Even in instances with such references, the dependency is limited to the exact provision or function of the provision that relies upon the cross-reference. Thus, we explained in proposing the Protecting Care Access Exception that the exception would operate independently of any provision of any other exception in part 171 and any provision in 45 CFR 171 that does not reference it (89 FR 63629). We stated in proposing the Protecting Care Access Exception that it was our intent that if any provision in § 171.206 were held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or stayed pending further judicial or agency action, such provision shall be severable from other provisions of § 171.206 that do not rely upon it and from any other provision codified in 45 CFR part 171 that does not explicitly reference § 171.206 even if such provisions were to be established or modified through this same rulemaking action (89 FR 63629 and 63630). It continues to be HHS's intent that if any provision of § 171.206, as finalized in this final rule, were held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or

[38] The HIPAA Privacy Rule does *not* generally require uses and disclosures of PHI but merely permits uses and disclosures for various purposes. Disclosures that *are* required under the HIPAA Privacy Rule are identified in 45 CFR 164.502(a)(2).

[39] For purposes of this discussion and of the proposed Protecting Care Access Exception, we noted that a risk need not be one that is certain to occur, or that is likely to occur immediately following, an access, exchange, or use of EHI in order to be one that could arise from the access, exchange, or use.

[40] In this preamble, we at some points use for brevity and readability ''potentially related to reproductive health care'' as shorthand for EHI that shows or would carry a substantial risk of supporting an inference that (as described in proposed § 171.206(b)(1)(iii)) the patient has health condition(s) or history for which reproductive health care is often sought, obtained, or medically indicated.

stayed pending further judicial or agency action, such provision shall be severable from other provisions of § 171.206 that do not rely upon it and from any other provision codified in 45 CFR part 171 that does not explicitly reference § 171.206 even if such provisions were to be established or modified through this same final rule.

As we noted in the HTI–2 Proposed Rule (89 FR 63630), a patient's ability to access care can be adversely affected when a provider believes they could be exposed to legal action based on the mere fact that care is provided. Given the demonstrated chilling effect of some states' laws on the availability of medically appropriate care, it is reasonable and necessary for actors to mitigate risks of potential exposure of health care professionals and other persons who provide or facilitate, as well as those who seek or obtain, reproductive health care that is lawful under the circumstances in which the care is provided to legal action based on the mere fact that such care was sought, obtained, provided, or facilitated. Thus, we stated (89 FR 63630), a new exception was needed to address actors' concerns about potentially implicating the information blocking definition (§ 171.103) if they choose not to share applicable EHI in the circumstances where the Protecting Care Access Exception (§ 171.206) would apply. We stated that this exception (§ 171.206) is important and intended to ensure health care providers do not feel the need to adopt paper or hybrid recordkeeping methods in place of fully electronic, interoperable formats (89 FR 63630).[41] We explained that we believe it is reasonable and necessary for an actor to restrict access, exchange, or use of specific EHI that indicates or (under § 171.206(b)) is potentially related to reproductive health care so that health care providers continue to use modern, interoperable health IT that better promotes patient safety than would paper or hybrid recordkeeping methods (89 FR 63630). We clarified that creating an information blocking exception that would exclude from the information blocking definition an actor's restricting EHI sharing under the conditions of the Protecting Care Access Exception (§ 171.206) is necessary to preserve and promote public trust in health care professionals, health care, and the health information infrastructure.

The Protecting Care Access Exception (§ 171.206), as proposed (89 FR 63630) and as finalized in this final rule, is intended to address actors' concerns about potentially implicating the information blocking definition if they choose not to share EHI in a scenario that an actor believes in good faith could risk exposing a patient, provider, or facilitator of lawful reproductive health care to potential legal action based on the mere fact that reproductive health care was sought, obtained, provided, or facilitated (89 FR 63632). Under the *patient protection* condition (§ 171.206(b)), the exception is also intended to address such concerns and belief, on the part of the actor, specific to EHI indicating a patient has health condition(s) or history for which reproductive health care is often sought, obtained, or medically indicated.

The HIPAA Privacy Rule does not prohibit the use or disclosure of PHI that indicates or is potentially related to ''reproductive health care'' as defined in 45 CFR 160.103 if the use or disclosure is not for a purpose described at 45 CFR 164.502(a)(5)(iii) and the use or disclosure is otherwise required or permitted by the HIPAA Privacy Rule. Therefore, the Protecting Care Access Exception is needed where an information blocking actor (whether or not that actor is required to comply with the HIPAA Privacy Rule) is concerned about the information blocking implications of limiting sharing of EHI when the actor believes such limits could reduce a risk of potential exposure to legal action (as defined in § 171.206(e)) in connection with an access, exchange, or use of such EHI for a permissible purpose.

We recognize that no information blocking exception can address all concerns a person may have about potential legal action for the mere act of seeking, obtaining, providing, or facilitating reproductive health care. However, we clarify that, to the extent such concerns may be mitigated by an information blocking exception that applies where an actor chooses to withhold relevant EHI from access, exchange, or use that all other applicable law would permit and where no other existing information blocking exception applies, we believe an exception that applies to such withholding of EHI is reasonable and necessary. We noted our concern that actors' uncertainty about whether such withholding of EHI could implicate the information blocking definition could prevent actors from withholding EHI unless an exception applies. Thus, we believe the Protecting Care Access Exception is needed to address actors' concerns specific to information blocking related to the risk of providers changing or limiting what care they are willing to offer (such as when a professional changes practice specialty or a hospital closes a service or department).

When providers limit what care they are willing to offer or what new patients they are willing to accept, it may be more difficult for those who seek care to get access to the care they need. When patients' needs are not being met, they lose trust in the health care system and in their physicians. Trust in one's own physician, in general, correlates with better care satisfaction and outcomes.[42] This may also be true of trust in other types of health care professionals, such as nurses, physician assistants, pharmacists, or organizational providers such as hospitals or long-term/post-acute care facilities. Thus, we believe that addressing actors' uncertainty specific to information blocking with the Protecting Care Access Exception would promote better patient satisfaction and health outcomes as well as continued development, public trust in, and effective nationwide use of health information technology infrastructure to improve health and care.

Moreover, actors' uncertainty about the potential information blocking implications of not sharing all of the EHI that applicable laws would permit them to share could undermine health care professionals' (and other health care providers') confidence in their ability to protect the privacy and confidentiality of their patients' EHI. Such a lack of confidence on the part of health care providers can in turn erode a patient's trust.

As we noted in the HTI–2 Proposed Rule (89 FR 63630), patient trust in physician confidentiality and competence is associated with patients being less likely to withhold information from doctors and more likely to agree it is important for health care providers to share information with each other.[43] Thus, we clarified that the

[41] As defined in § 171.102 and excluding certain information as specified in subparagraphs (1) and (2) of this definition, EHI is electronic protected health information (ePHI) (defined in 45 CFR 160.103) that is or would be in the designated record set (defined in 45 CFR 164.501) regardless of whether the group of records are used or maintained by or for a covered entity as defined in 45 CFR 160.103.

[42] Birkhäuer, J., Gaab, J., Kossowsky, J., Hasler, S., Krummenacher, P., Werner, C., & Gerger, H. (2017). Trust in the health care professional and health outcome: A meta-analysis. PloS one, 12(2), e0170988. *https://doi.org/10.1371/journal.pone.0170988.*

[43] Iott, B.E., Campos-Castillo, C., & Anthony, D.L. (2020). Trust and Privacy: How Patient Trust in Providers is Related to Privacy Behaviors and Attitudes. AMIA . . . Annual Symposium proceedings. AMIA Symposium, 2019, 487–493 *https://pmc.ncbi.nlm.nih.gov/articles/PMC7153104/.*

Protecting Care Access Exception in § 171.206—which would apply under specified conditions to actors' practices of choosing not to share specific EHI (where such sharing would be otherwise lawful)—is reasonable and necessary to preserve patient trust in the health IT infrastructure and information sharing, as well as to protect the availability and safety of care, and to promote better care outcomes (89 FR 63630).

One of the goals of the information blocking exceptions is ''to accommodate practices that, while they may inhibit access, exchange, or use of EHI, are reasonable and necessary to advance other compelling policy interests . . .'' including ''[p]romoting public confidence in the health IT infrastructure by supporting the privacy and security of EHI and protecting patient safety,'' as we explained in the ONC Cures Act Final Rule (85 FR 25791). In the absence of an information blocking exception applicable to risks of legal actions that actors believe could arise from the sharing of EHI for permissible purposes (for instance, with entities not required to comply with the HIPAA Privacy Rule), we are concerned actors may be unwilling to engage in these practices that—for example—advance public confidence in health IT infrastructure and protect patient safety.

If other actors are unwilling to engage in such practices, health care providers may convey to patients an inability to withhold EHI even when they believe withholding the EHI could mitigate the potential risks cognizable in the current environment. If patients are aware that health care providers believe that they are unable to avoid sharing EHI to mitigate risks of potentially exposing care providers, recipients, or facilitators to legal action then patients may be less willing to be candid with their providers about their health history, conditions, or other information relevant to the patient's care. Without that candor, health care providers may be unable to provide care that will best meet the patient's needs. In addition, a care provider's lack of confidence or competence in their ability to adequately safeguard the privacy of information that care recipients share with them could erode the mutual trust that contributes to better care outcomes by promoting more effective relationships between care providers (including clinicians) and the individuals receiving care.

In the absence of an exception applicable to practices that the proposed Protecting Care Access Exception would cover, we are concerned that health IT developers of certified health IT and HINs/HIEs may be unwilling to take the actions necessary to address their own, or their customer health care provider's, good faith belief that particular sharing of specific EHI could create the risk of potential exposure of a health care provider (or persons seeking, obtaining, providing, or facilitating care) to legal action regarding health care items and services that are lawful under the circumstances in which such health care is provided. Thus, health care providers in these situations may believe they are faced with a choice between changing what care they offer (such as when a hospital closes a department) or switching at least some portions of their clinical records from electronic to paper formats specifically to avoid concerns that they may be engaged in information blocking.

For health care professionals in reproductive health care specialties or whose practice necessarily includes patients who need reproductive health care, a partial or complete switch to paper-based recordkeeping for that care may seem like their only option in the absence of the Protecting Care Access Exception. Because the information blocking definition references ''electronic health information'' rather than all ''protected health information,'' the information blocking regulations do not apply to health information maintained only in paper format. A reversal to paper-based methods of keeping even a relatively small portion of the records currently managed using modern health IT would have an adverse effect on interoperability and on the development of a nationwide health IT infrastructure consistent with section 3001(b) of the PHSA. Thus, such a reversal to paper-based recordkeeping methods would impede the goals of promoting public confidence in the electronic health information infrastructure and of advancing patient safety through the use of interoperable health IT and EHI. For example, information kept only on paper is not available to support tools that help clinicians avoid adverse drug events by automatically checking for potential drug-drug or drug-allergy interactions.

As we discussed in the HTI–2 Proposed Rule and in the preceding paragraphs, we stated that, for the reasons discussed at 89 FR 63627–63631, we believe actors' practices of limiting EHI sharing under the conditions of the Protecting Care Access Exception are reasonable and necessary to preserve advances in digitization, interoperability, and public confidence in the nationwide health information technology infrastructure. We noted that actors selectively withholding EHI that indicates or is potentially related to reproductive health care (as applicable) under the conditions of the proposed exception would also promote patient safety and improve outcomes by fostering trust between care providers and recipients. Maintaining advances and trust in the health information technology infrastructure fosters better care by continuing to make information available to more care providers and care recipients when and where the information can help them choose the right care for each patient (care recipient). Use of interoperable, electronic health IT and exchange of EHI also enables providers to use decision support tools, such as drug-drug interaction alerting, and to deliver better care.

In the HTI–2 Proposed Rule (89 FR 63631), we noted that the proposed Protecting Care Access Exception (§ 171.206) could apply in some circumstances where another exception (such as Preventing Harm (§ 171.201) or Privacy (§ 171.202)) would or could also apply. The proposed new exception was, however, intended to stand alone and independent of other exceptions. We note that through a typographical error, the word ''exceptions'' was omitted from the HTI–2 Proposed Rule preamble at the end of the second sentence at *89 FR 63631.* We also stated that the proposed Protecting Care Access Exception would not affect if, how, or when any provision of any exception that does not explicitly reference § 171.206 applies to an actor's practice, or how any such provision operates. Moreover, we stated that where facts and circumstances were such that an actor could choose to shape their practice in withholding EHI to satisfy either the Protecting Care Access Exception (if finalized) or another exception, the actor would have discretion to choose which exception they wish to satisfy. An actor's practice in such situation(s) would not need to satisfy both exceptions in order for the practice to not be considered information blocking.

In the HTI–2 Proposed Rule (89 FR 63631), we also noted that one of the existing information blocking exceptions applicable in some circumstances where the proposed Protecting Care Access Exception could also apply is the Privacy Exception (§ 171.202). Of particular relevance to actors' confidence that they will not be ''information blocking'' if they withhold EHI based on the individual's preference that their EHI be closely held is the Privacy Exception's sub-exception ''respecting an individual's request not to share information'' (§ 171.202(e)).

The § 171.202(e) Privacy sub-exception is applicable where an actor agrees to honor an individual's request not to share their EHI even where it is permissible to share under all applicable law. We proposed to strengthen and simplify the § 171.202(e) Privacy sub-exception as discussed in the HTI–2 Proposed Rule (89 FR 63622). Finalization decisions specific to that proposed revision to the § 171.202(e) Privacy sub-exception are discussed in this final rule preamble, above. The § 171.202(e) sub-exception offers actors certainty that they can, if they so choose, honor an individual's preference for restrictions on the sharing of EHI about the individual without subjecting the actor to an information blocking penalty or disincentive for not sharing such EHI. The § 171.202(e) sub-exception does not—and will not as revised by this final rule—rest on why the individual may prefer that some or all of their EHI not be shared. But, as we noted in proposing the Protecting Care Access Exception, the § 171.202(e) sub-exception only applies to scenarios where the individual requests the restrictions (89 FR 63631). As we noted in the HTI–2 Proposed Rule (89 FR 63631), there may be circumstances where an individual does not request the restriction, but when it would be reasonable and necessary for an actor to interfere with access, exchange, or use of EHI for the purpose of addressing individuals' (or providers' and others') risk of potential exposure to legal action that could discourage availability, access, and choice of medically appropriate reproductive health care.

We stated in the HTI–2 Proposed Rule (89 FR 63631 and 63632) that we believe it would be burdensome to individuals, in the constantly changing legal landscape, to rely exclusively on them to make or update requests for restrictions on their EHI that indicates or is potentially related to reproductive health care. In such a complex and uncertain environment, any individual may experience difficulty in making timely requests for such restrictions. Moreover, we noted that some individuals may not have the resources—such as affordable, secure access to the internet—to update their providers on their information sharing preferences outside of the occasions that they interact with these providers to obtain health care. Thus, we observed that individuals may not be able to request restrictions soon enough, or that are broad enough, to protect themselves or others from potential legal liability based on what care they have received (89 FR 63631 and 63632).

We explained (at 89 FR 63632) that an individual's request for restrictions on sharing their EHI is specific and limited to that individual's EHI, and (depending on what the individual chooses to request) may be specific to identified requestors of the individual's EHI. Thus, we stated that it is not as efficient for actors to implement such individual restrictions as it would be to implement restrictions based on an organizational policy that consistently addresses a concern common to sharing any individuals' EHI in a particular access, exchange, or use scenario—such as the actor's good faith belief that there is a concern regarding the risk of potential exposure to legal action that could be created or increased by propagating to a recipient not required to comply with the HIPAA Privacy Rule the specific EHI within a patient's record that indicates the receipt of reproductive health care.

For these reasons, we stated (89 FR 63632) our belief that that health care providers and other actors must have available to them an information blocking exception designed to apply to practices that the actor believes could help to avoid creating—through sharing of EHI indicating or potentially related to reproductive health care in relevant scenarios—a risk of potential exposure to legal action based on the mere fact that lawful reproductive health care was sought, obtained, provided, or facilitated (or where the proposed *patient protection* condition would apply, because the EHI indicates patient health history or condition(s) for which reproductive health care is often sought, obtained, or medically indicated).

When an actor has a belief consistent with the proposed § 171.206(a)(1) belief requirement, we believe an exception should be available that is designed to cover practices likely to interfere with access, exchange, or use of EHI under conditions specified in the exception. Therefore, we proposed a new Protecting Care Access Exception (§ 171.206) for the information blocking definition (89 FR 63632 through 63640 and 63804). We stated that when its conditions were met, the proposed new exception would cover an actor's practices that interfere with access, exchange or use of EHI in order to reduce potential exposure of applicable persons to legal action (as defined in the exception). For the exception as proposed to apply, we explained that the potential exposure to legal action that the actor believes could be created would need to be one that would arise from the fact that reproductive health care was (or may have been) sought, obtained, provided, or facilitated rather than because the care provided was (or is alleged to have been) clinically inappropriate or otherwise substandard.

We noted that the statutory authority in PHSA section 3022(a)(3) is to ''identify reasonable and necessary activities that do not constitute information blocking.'' Thus, practices that meet the applicable conditions of the proposed Protecting Care Access Exception (§ 171.206) would not be considered information blocking (as defined in PHSA section 3022(a)(1) and 45 CFR 171.103), and, therefore, actors would not be subject to civil monetary penalties or appropriate disincentives as applicable, under HHS information blocking regulations based specifically on those practices.

As is the case with exceptions already established in 45 CFR part 171, the proposed Protecting Care Access Exception would not override an actor's obligation to comply with a mandate contained in law that requires disclosures that are enforceable in a court of law. For example, the proposed exception would not invalidate otherwise valid court-ordered disclosures, or disclosures (for example, infectious disease, or child or elder abuse case reports) mandated by a Federal, State, or Tribal law with which an actor is required to comply in relevant circumstances. The exception is also not intended to justify an attempt to limit the legally required production of (otherwise discoverable) EHI in a civil, criminal, or administrative action that is brought in the jurisdiction where a health care provider provided health care that a patient (or their representative) alleges was negligent, defective, substandard, or otherwise tortious. Similarly, the exception would not apply to, and is not intended to justify, attempts to avoid disclosing information where the actor's belief is that the information could be useful to a legal action against the actor or other person specific to alleged violations of federal or other law against conduct other than merely seeking, receiving, providing, or facilitating reproductive health care. One example of such other conduct would be a physical assault of any natural person, even if the assault occurred in a health care setting.[44]

[44] The definition of ''person'' for purposes of 45 CFR part 171 is codified in § 171.102 and is, by cross-reference to 45 CFR 160.103, the same definition used for purposes of the HIPAA Privacy Rule. The § 160.103 definition of ''person'' clarifies the meaning of ''natural person'' within it. We noted that we use ''natural person'' with that same meaning in § 171.206(b)(3) and throughout the discussion of § 171.206. Consistent with the § 171.102 definition of ''person'' by cross-reference to the definition of ''person'' in 45 CFR 160.103, ''natural person'' in context of the information

Continued

We emphasized that if the proposed Protecting Care Access Exception were to be finalized, actors would continue to be subject to other Federal laws, and to State and Tribal laws. This is consistent with how the information blocking exceptions in place today operate in harmony with, but separate from, requirements of other statutes and regulations—including, among others, the HIPAA Privacy Rule's individual right of access (45 CFR 164.524).

For example, an actor that is also a HIPAA covered entity may receive a request from an individual for access to EHI of which the individual is the subject, in a manner (form and format) specified by the individual. If the actor is technically unable to fulfill the request, or if the individual and actor cannot come to agreement on terms to fulfill the request in the manner requested or an alternative manner consistent with § 171.301(b), the actor may be able to satisfy the Infeasibility Exception by meeting that exception's *manner exception exhausted* (§ 171.204)(a)(4)) and the *responding to requests* (§ 171.204(b)) conditions. By satisfying the Infeasibility Exception, the actor's practice of failing to fulfill the request for access, exchange, or use of EHI will not be considered information blocking. However, the actor in this example is a HIPAA covered entity and, therefore, must comply with the HIPAA Privacy Rule's right of access at 45 CFR 164.524, even though the actor's practices in failing to provide access, exchange, or use of EHI met the requirements to be covered by the Infeasibility Exception (§ 171.204) for purposes of the information blocking regulations.

We noted that consistent with our approach to establishing the initial eight information blocking exceptions, the conditions of the proposed Protecting Care Access Exception (§ 171.206) are intended to limit its application to the reasonable and necessary activities enumerated within the exception. Therefore, the Protecting Care Access Exception would (for purposes of the information blocking definition in § 171.103) cover an actor's practice that is implemented to reduce potential exposure of persons meeting the § 171.202(a)(2)(i) or (ii) definition of ''individual,'' other persons referenced or identifiable from EHI as having sought or obtained reproductive health care, health care providers, or persons who facilitate access to or delivery of health care to potential threats of legal action based on the decision to seek, obtain, provide, or facilitate reproductive health care, or on patient health information potentially related to reproductive health care, subject to the exception's conditions.

We explained that for the proposed exception to apply to an actor's practice that is likely to interfere with EHI access, exchange, or use, the practice would have to satisfy the *threshold* condition in the proposed paragraph (a), and at least one of the other conditions (proposed paragraph (b) or (c)) of the proposed exception (89 FR 63633). We clarified that an actor's practice could satisfy both conditions (b) and (c) at the same time, but the minimum requirement for the proposed exception to apply would be that the practice satisfy at least one of these two conditions in addition to the *threshold* condition in paragraph (a) (89 FR 63633).

We discuss the proposed conditions of the proposed Protecting Care Access Exception, and the comments we received specific to them, in detail in below.

Comments. In general, many commenters expressed strong support for the proposed Protecting Care Access Exception and endorsed the necessity of an exception that applies to withholding of specific EHI that indicates or is potentially related to reproductive health care in circumstances where the exception applies. Many commenters stated that the proposed exception will facilitate patients' access to care, and health care providers' willingness to provide such care to patients who are seeking it. Several commenters also stated that the proposed exception would provide clarity and certainty for actors, including clarity for health care providers who are seeking to understand their responsibilities under the information blocking regulations in light of varying laws regarding reproductive health information in different jurisdictions. Some commenters stated that the proposed exception would encourage the continued use of electronic methods for sharing health information, so that some actors would not feel that they needed to revert to paper records to protect their patients' privacy. Several commenters noted the importance of trust in the patient-provider relationship to support health care and interoperability including one commenter who noted that this exception would protect the sanctity of the patient-physician relationship.

Many commenters stated that the proposed exception would support communication and trust in the patient-provider relationship, and that such trust is essential to provide care to patients. One commenter stated that ''many clinicians have resorted to keeping paper charts'' and that ''it is essential that ASTP/ONC enable us to better protect our patients from unintended disclosure of their legally sensitive health information.'' Many commenters supported finalization of the exception as proposed. Two commenters stated that HIEs have direct experience with states and localities implementing laws that would invoke other exceptions to information blocking, leading to potentially less interoperability and data exchange, in order to address concerns that actors would otherwise run afoul of information blocking regulations if they did not exchange reproductive data. These commenters stated they, therefore, appreciate this exception.

Response. We appreciate the support for this exception expressed by many commenters. Having considered all comments received in response to the proposed Protecting Care Access Exception (§ 171.206), we have finalized the exception as proposed and provide additional responses to specific comments below.

Comments. Several commenters expressed support for the exception's intent or effect but advocated reducing the conditions that need to be met for the exception to apply, eliminating documentation requirements, or both. Some of these comments advocated an exception that would apply broadly where a health care provider believes withholding any EHI could protect patient privacy or protect patients or others from exposure to potential legal action on bases beyond those addressed in the proposed exception.

Response. We appreciate the commenters' support for the exception. We have finalized the exception's conditions as proposed because we believe they strike the best balance we can attain at this time between the interests of actors and patients in protecting reproductive health care availability and patients' reproductive health privacy with the interests of actors, patients, and others in maintaining and building upon progress made to date toward EHI interoperability and a norm of information sharing that includes individuals being able to easily access, exchange, and use their EHI however and whenever they want. We have not adopted any of the alternative proposals on which we sought comments that would have added complexity to the exception in an effort to maintain this balance of interests. We do not believe it is necessary to reduce the conditions

blocking regulations means ''a human being who is born alive.''

that need to be met to satisfy the exception, or to eliminate its documentation requirements, because doing so would not strike the best balance between the aforementioned interests of actors and patients.

We have adopted the ''good faith belief'' standard that considers what potential risk of exposure to legal action the actor honestly believes could be reduced by their practice likely to interfere with access, exchange, or use of EHI. By relying on a subjective standard, the § 171.206(a)(1) belief requirement supports the policy goal of this exception being efficient for actors to use, because the *threshold* condition's subjective standard does not require the actor to track or analyze in detail all the laws of the various jurisdictions across the country in order to hold a belief in good faith. Thus, the subjective ''good faith belief'' requirement ensures the Protecting Care Access Exception can be used easily and with confidence even by single-physician practices and small rural hospitals or LTPAC facilities; these providers need not understand all of the various laws in order to hold an honest belief.

Where an actor chooses to satisfy the § 171.206(a)(3) implementation requirement by implementing a practice based on a case-by-case determination, they would need to document the determination consistent with paragraph (a)(3)(ii). Within that, we note that although subparagraph (D) calls for the documentation to ''identify the connection or relationship between the interference with particular access, exchange, or use of specific electronic health information and the risk of potential exposure to legal action,'' the identification need only describe the risk of potential exposure to legal action that the actor believes the interference with EHI access, exchange, or use could reduce. To satisfy the § 171.206(a)(3) implementation requirement through an organizational policy (paragraph (a)(3)(i)) or case-by-case determination (paragraph (a)(3)(ii)), an actor would *not* need to catalog potential sources of legal risk comprehensively or to a high degree of specificity. Further, we note that if an actor chooses to satisfy the § 171.206(a)(3) implementation requirement by implementing a practice consistent with paragraph (a)(3)(i), all that is expressly required to be in writing is an organizational policy with the characteristics identified in subparagraphs (a)(3)(ii)(A) through (E). None of the subparagraphs in (a)(3)(i) specify that the policy call for creation of particular documentation every time the practice implemented based on the policy may interfere with someone's access, exchange, or use of relevant EHI.

Broadening the Protecting Care Access Exception (§ 171.206) to apply when an actor has a good faith belief that sharing EHI could create risk of potential exposure to legal action based on anything other than the mere act of seeking, obtaining, providing, or facilitating ''reproductive health care'' (using the definition of reproductive health care as defined at § 171.102) would be beyond the scope of the proposal. We also remind readers that other exceptions may apply in a variety of circumstances where the finalized Protecting Care Access Exception (§ 171.206) does not apply. For example, the Privacy sub-exception ''individual's request not to share EHI'' (§ 171.202(e)) is *not* limited or specific to concerns related to any specific type(s) of health care, health condition(s) or history, or reasons why an individual may be concerned about sharing some or all of their EHI with whomever the individual does not want to have access, exchange, or use of that EHI. As we noted in the HTI–1 Final Rule (89 FR 1353): the § 171.202(e) Privacy sub-exception does not specify that the individual requesting restrictions should have particular reasons for requesting restrictions or be required to share their reasoning with the health care provider or other actor of whom they make the request. As we observed in the HTI–1 Proposed Rule (88 FR 23874), out of respect for the patient's privacy and autonomy and fostering trust within the patient-provider relationship, a provider might choose to honor a patient's request for restrictions on sharing of their EHI even if the provider did not *know* the patient's specific reasons for the request. As originally codified, and as revised by this final rule, the § 171.202(e) Privacy sub-exception applies to an actor's practice that meets its requirements—regardless of *why* the individual may have made a request consistent with § 171.202(e)(1) or what EHI the individual may not want shared. (As we have repeated in the HTI–2 Proposed Rule and this final rule, however, we remind actors and other readers that none of the exceptions established or revised by this final rule, and none of the other six exceptions codified in 45 CFR part 171, are intended to override any other applicable law that compels access, exchange, or use of EHI.)

Comments. Some commenters did not support the proposal. Two of these commenters expressed concern that the proposal could impede enforcement of, or investigations into possible violations of, Federal and State laws such as those regulating reproductive health care. One commenter stated that the exception is not reasonable and necessary as required by the Cures Act and is arbitrary and capricious in violation of the Administrative Procedure Act. One of these commenters connected opposition to the proposal to the commenter's view that actors should not be expected to evaluate or determine the lawfulness of others' actions. Other commenters expressed concern that the proposal could give actors too much power to withhold or limit access to information, that EHR developers would disproportionately benefit from the proposal, or that EHR developers might use the Protecting Care Access Exception to limit data sharing in a way that benefits them and harms patients. One commenter generally opposed the exception and stated that the use of pronouns other than those connoting a person is male or female, or pronouns not matching the patient's sex assigned at birth, could lead to a lower quality of medical care. A few commenters stated that their concerns about the proposed exception should be addressed by placing control with providers as to whether the exception applies, prohibiting actors from using the exception for commercial gain, or ensuring that patients understand when their data is requested, disclosed, or protected by the exception. Other commenters suggested that health IT developers of certified health IT should be required to enable a user to restrict uses or disclosures when requested by the patient, stating this requirement would help reduce ''overly broad'' restrictions on interoperability or EHI sharing.

Response. Having considered all comments received, in context of the totality of feedback on the proposed exception, we have concluded that finalizing the exception as proposed is consistent with identifying, through notice and comment rulemaking, reasonable and necessary activities that do not constitute information blocking. We do not believe the exception impedes investigation or enforcement of independent laws enforceable against any actor in a court with jurisdiction over the actor and subject matter. As we have repeatedly reminded actors in this final rule and as is the case with exceptions previously established in 45 CFR part 171, the Protecting Care Access Exception (§ 171.206) would not override an actor's obligation to comply with a mandate contained in law that requires disclosures that are enforceable in a court of law. For example, the proposed exception would not

invalidate otherwise valid court-ordered disclosures, or disclosures (for example, infectious disease, or child or elder abuse case reports) mandated by a federal, state, or tribal law with which an actor is required to comply in relevant circumstances. Moreover, the Protecting Care Access Exception, like all information blocking exceptions, is voluntary. It is not intended to create an affirmative obligation for an actor to evaluate whether a risk of potentially exposing anyone to legal action from any particular EHI access, exchange, or use scenario(s) might occur.

Because the Protecting Care Access Exception is unrelated to the use of pronouns in medical documentation, and does not require any actor to withhold any of a patient's EHI from any health care provider treating the patient, a health care provider's use of pronouns or any other demographic data is outside the scope of this exception.

Commenters' suggestions that health IT developers of certified health IT should be required to enable a user to restrict uses or disclosures when requested by the patient are beyond the scope of this exception. As we explained earlier in this final rule's preamble, in discussing the finalized revision to sub-exception (e) of the Privacy Exception at § 171.202, suggestions that ASTP/ONC mandate health IT include particular functionalities are outside the scope of any enhancement to the information blocking regulations (45 CFR part 171) included in the HTI–2 Proposed Rule. The Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)) accommodates actors who are unable to unambiguously segment data they have chosen to withhold consistent with another applicable exception—such as § 171.202(e) (''individual's request not to share EHI'')—from other EHI they could share with a requestor. We discuss earlier in this preamble revisions to § 171.204(a)(2) that include adding explicit reference to the Protecting Care Access (§ 171.206). We refer readers interested in learning more about how information blocking exceptions may be used in complement when an actor wishes to engage in a practice that is not fully covered by a single exception to the discussion of that topic in the HTI–1 Final Rule (89 FR 1353 and 1354).

In finalizing the initial information blocking exceptions in the ONC Cures Act Final Rule, we stated that we were guided by three overarching policy considerations: that exceptions are limited to certain activities that we believe are important to the successful functioning of the U.S. health care system, that exceptions are intended to address a significant risk that regulated individuals and entities will not engage in these reasonable and necessary activities because of potential uncertainty regarding whether they would be considered information blocking, and that each exception is intended to be tailored, through appropriate conditions, so that it is limited to the reasonable and necessary activities that it is designed to exempt (*85 FR 25649*).

This finalized exception aligns with these same policy considerations. As we explained in the HTI–2 Proposed Rule, we had at that time come to understand that some health care providers and other actors had concerns about the risk of potential exposure to legal action flowing from the uses and disclosures of EHI indicating or (in the case of patient health concern(s) or history) potentially relating to reproductive health care that remain permissible under applicable law (*89 FR 63629*). We believe that the many comments we received in support of finalizing the Protecting Care Access Exception, as proposed or with various adjustments to make it easier for actors to use, validate our balancing of actors' concerns. Information provided in such comments supports our belief that actors' and patients' response to these concerns in the absence of the Protecting Care Access Exception has contributed to patients withholding information from their health care providers and health care providers avoiding creation of EHI, such as through use of paper recordkeeping; both of these solutions we believe have a much greater negative impact than this narrowly tailored information blocking exception could on care quality, coordination, and advancement of an interoperable nationwide health information infrastructure where sharing EHI consistent with applicable law and patient preferences is the norm and withholding EHI is the exception.

We believe that addressing actors' uncertainty specific to information blocking by finalizing the Protecting Care Access Exception will promote better patient satisfaction and health outcomes as well as continued development, public trust in, and effective nationwide use of health information technology infrastructure to improve health and care. We noted this belief in proposing this new exception (*89 FR 63620*). By addressing an actor's concern about potential exposure to legal action flowing from an access, exchange, or use of EHI related to reproductive health care, the exception addresses the risk that actors such as health care providers may be unable to provide care that will best meet the patient's needs (*89 FR 63631*), among other risks we describe in the HTI–2 Proposed Rule's preamble (*89 FR 63630*). The exception is also tailored to limit its application to the reasonable and necessary activities enumerated within the exception, consistent with our approach to establishing the initial eight information blocking exceptions (*89 FR 63632*).

We plan to remain alert for signals that any type(s) of actor—not just health IT developers of certified health IT—may be attempting to misuse any of the exceptions in 45 CFR part 171. We would anticipate engaging in education and outreach as well as (where applicable) enforcement steps in response to such signals and may consider future proposals for 45 CFR part 171 in response to changing market conditions.

Comments. One commenter stated that it is not the responsibility of the health IT developer or health care provider to assess the motivations of an otherwise legal request for information, or to take actions to restrict data sharing that could be unlawful in some states. One commenter expressed concern about setting a precedent where an actor's practice is not considered information blocking but may still be a violation of another law.

Response. For an actor's practice to be covered by the finalized Protecting Care Access Exception, there is no specific requirement that the actor must assess the motivations of any request for EHI access, exchange, or use for permissible purposes. The finalized exception in no way requires any actor to take any action that would violate any law enforceable against the actor.

All information blocking exceptions are voluntary. They offer actors assurance that a practice consistent with one or, where applicable, more exceptions will not meet the ''information blocking'' definition (in § 171.103 or PHSA section 3022(a)) even if such practice is not required by law and is likely to interfere with access, exchange, or use of EHI. The Protecting Care Access Exception is responsive to concerns we have heard from the regulated community; it is intended to address these concerns for actors who choose to limit EHI sharing under the exception's conditions. The Protecting Care Access Exception is not intended to create a mandate that an actor engage in any practice(s) the exception would cover if the actor does not want to engage in such practice(s). Also, actors who may choose to limit availability of applicable EHI under the conditions of

the finalized Protecting Care Access Exception will nevertheless continue to be subject to other Federal laws, and to State and Tribal laws. We emphasized in the HTI–2 Proposed Rule that this would be the case if the Protecting Care Access Exception were to be finalized (*89 FR 63632*) and noted this is also the case with exceptions that had previously been established in *45 CFR part 171.* We reiterate that the Protecting Care Access Exception does *not* override an actor's obligation to comply with a mandate contained in law that requires disclosures that are enforceable in a court of law. Because we have explicitly, and repeatedly, reminded actors in the HTI–2 Proposed Rule [45] and this final rule [46] that information blocking exceptions do not override such obligations, we presume such actors will, therefore, account for this reality in their approach to maintaining compliance with the laws to which they are subject.

Comments. Some commenters stated that the proposed exception would be difficult to implement because the actor's staff may have different interpretations of potential legal risk or because there are not existing technical standards which could be leveraged to support the exception's implementation, particularly the ability to identify and segment relevant EHI.

Response. If an actor is concerned about different members of their staff having different understandings of legal risks or when the exception would apply, we refer the actor to the finalized conditions of the exception. These include an option to satisfy the § 171.206(a)(3) implementation requirement by implementing practices consistent with an organizational policy that meets subparagraph (i) of § 171.206(a)(3). It has been our observation that developing and training relevant staff on written organizational policies is a strategy that helps an organization's personnel understand how to proceed, and to act consistently, in relevant scenarios.

We recognize that the capabilities of existing health IT continue to evolve, and that there is variation in health IT products' ability to segment EHI that a health care provider or a patient may wish to withhold from various access, exchange, or use scenarios from other EHI with the levels of precision and automation that providers and patients would prefer. In the HTI–2 Proposed Rule, we stated that because there is a potential that some actors who may wish to withhold specific EHI under the conditions specified in the Protecting Care Access Exception (§ 171.206) may not yet have the technical capability needed to unambiguously segment the EHI for which § 171.206 would apply from other EHI that they could lawfully make available for a particular access, exchange, or use, we proposed to modify the Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)) to explicitly provide for circumstances where the actor cannot unambiguously segment EHI that may be withheld in accordance with Protecting Care Access Exception (§ 171.206) from the EHI for which this exception is not satisfied (*89 FR 63634*). We refer readers to the section of this final rule preamble where we discuss the finalized revision to the Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)).

Comments. One commenter encouraged ASTP/ONC to engage in further discussions with stakeholders to refine the proposals and to align them further with HIPAA and other HHS regulations rather than adopting the proposed exception. Some commenters suggested that ASTP/ONC require health IT developers of certified health IT enable a user to implement a process to restrict uses or disclosures of data in response to a patient request when such restriction is necessary, citing 88 FR 23822. Another commenter encouraged ASTP/ONC to strengthen certification criteria for capabilities to allow clinical users to tag and withhold data from exchange.

Response. We recognize that no information blocking exception can address all of the concerns a person may have about potential exposure of various persons to legal action for the mere act of seeking, obtaining, providing, or facilitating reproductive health care (as we noted in the HTI–2 Proposed Rule at *89 FR 63630*). While we appreciate the commenters' suggestions, their requests specific to imposing certain requirements on developers of certified health IT, which appear to refer to ASTP/ONC's proposal in the HTI–1 Proposed Rule to adopt a new certification criterion ''patient requested restrictions'' in § 170.315(d)(14) which was not finalized in the HTI–1 Final Rule (*89 FR 1301*), are outside the scope of this rulemaking. We will continue to work with our federal partners to promote alignment on, and understanding of, regulations which support the lawful access, exchange, and use of electronic health information. We also note that we may consider amending relevant ONC Health IT Certification Program or information blocking regulations in future rulemaking in response to changing market conditions.

Comments. Several commenters requested that we develop guidance, education, examples, and training materials on the Protecting Care Access Exception, including for specific situations and fact patterns and materials for both providers and patients. For example, one commenter requested guidance specifically on how health care practices who serve patients who live in a different state can protect the information of their patients. Some commenters stated that actors such as health care providers have sometimes been hesitant or fearful to use information blocking exceptions, and that guidance and educational materials from ASTP/ONC are essential. Several commenters also noted the need for health care providers to engage with a variety of internal and external partners and entities in the implementation of their policies to comply with the information blocking regulations. One commenter requested that ASTP/ONC include examples, objective criteria for assessing legal risks, and best practices for documentation and patient communication in its guidance. Another commenter asked ASTP/ONC to include use cases in this final rule to help actors operationalize it. One commenter stated that ASTP/ONC should undertake education on information blocking more broadly. One commenter recommended, as part of implementation of the Protecting Care Access Exception, education for providers about the exception (and other information blocking exceptions) and best practices to protect sensitive health information and facilitate care coordination that supports confidentiality, safety, and autonomy for individuals.

Response. The requests and recommendations for additional guidance, training, examples, and educational materials on the information blocking exceptions are appreciated. We have not provided criteria for assessing legal risks in this final rule because we have finalized, as proposed, the subjective ''good faith'' standard for the § 171.206(a)(1) belief requirement. An actor would be free to reference or apply objective legal risk assessment criteria in determining whether they wish to engage in a practice the Protecting Care Access Exception would cover, if that is how the actor prefers to make such decisions. But we emphasize that because the finalized belief standard is a subjective standard it does *not* require an actor to reference or apply objective risk

[45] 89 FR 63509, 89 FR 63622, 89 FR 63632, 89 FR 63637, and 89 FR 63639.

[46] In addition to the reminder in this paragraph, we have reiterated it multiple times in this final rule preamble.

assessment criteria; any actor who wishes to do so could implement a practice consistent with the *threshold* condition (§ 171.206(a)) without having applied objective legal risk assessment criteria.

As part of our ongoing outreach and education, all feedback and information we receive helps to inform our consideration and ongoing development of resources such as webinar presentations, fact sheets, guidance, and frequently asked questions (FAQs). As new resources become available, they are publicly posted on ASTP/ONC's internet website: *https://www.healthit.gov.* Actors and other interested parties who would like to do so can also subscribe to ASTP/ONC email updates and be among the first to hear about newly posted resources and opportunities to register for upcoming webinars. (A subscription can be created or updated through ASTP/ONC's online Email Subscription Preference Center; for which the URL as of the date this final rule is published is: *https://www.healthit.gov/PreferenceCenter?qs=1&form=HealthIT_PreferenceCenter&height=1100&mbreak=800&mheight=1600.*)

Comments. Some commenters stated that ASTP/ONC and OIG should focus on enforcement with corrective action plans as opposed to the imposition of civil monetary penalties. One commenter stated that ASTP/ONC should exercise enforcement discretion for medical groups.

Response. Details of the enforcement process for actors who may be found to have engaged in information blocking, including imposing corrective action programs, are outside the scope of this rulemaking. In light of the many comments calling for ongoing education and information about all aspects of information blocking, we remind readers that ASTP/ONC has authority to review claims of potential information blocking against health IT developers of certified health IT that may constitute a non-conformity under the ONC Health IT Certification Program. Separately, OIG has authority to investigate claims of potential information blocking across all types of actors: health care providers, health information networks and health information exchanges, and health IT developers of certified health IT. We refer readers seeking additional information about the ''OIG Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Office of Inspector General's Civil Money Penalty Rules'' final rule (OIG Final Rule) implementing information blocking civil monetary penalties (88 FR 42820) to OIG's website (*https://oig.hhs.gov/reports-and-publications/featured-topics/information-blocking*) and those seeking more information about the ''21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program'' final rule (Information Blocking Provider Disincentives Final Rule) (89 FR 54662) to ASTP/ONC's website (*https://www.healthit.gov/informationblocking*). ASTP/ONC's website also provides information on how to submit an information blocking claim and what happens to a claim once it is submitted.

Comments. A few commenters stated that they did not support adding any additional or alternative conditions or requirements to the Protecting Care Access Exception. Some of these commenters stated that additional conditions or requirements would make the exception more complex, and that complying with various State or Federal laws relating to reproductive health care is already complex for health care providers. Some commenters also stated that adding additional conditions to the exception would not reduce the risk of information blocking or improper use of the exception or were unnecessary because other laws such as HIPAA already have their own requirements or enforcement mechanisms. One commenter asked that the exception consist of only the good faith belief condition, stating that the additional requirements created uncertainty and documentation burden.

Response. We appreciate the concerns raised by the commenters. We have not finalized any additional or alternative conditions or requirements for the Protecting Care Access Exception at this time. We will continue working with the regulated community and other interested parties to promote awareness of all of the information blocking exceptions.

We recognize that the health care and health privacy legal landscape is complex for reasons outside the scope of this final rule. However, we do not believe that an exception consisting of only the good faith belief portion of the threshold condition would provide patients or health care providers with adequate assurance that actors (including other health care providers) implement practices under the exception fairly, consistently, and with appropriate consideration of risks of legal action based on the mere fact that someone sought, obtained, provided, or facilitated (or, for the patient protection condition, may have sought, obtained, or needed) reproductive health care that was lawful under the circumstances.

As we stated in the HTI–2 Proposed Rule on how the information blocking regulations operate, the information blocking regulations operate both separately and differently from the HIPAA regulations (*89 FR 63629*). The information blocking regulations are based on statutory authority separate from HIPAA. We refer actors and other persons interested in learning more about how the information blocking regulations, and particularly the exceptions, work in concert with the HIPAA Rules and other privacy laws to support health information privacy, to the discussion of this topic in the HTI–1 Final Rule at *89 FR 1351* through *1354* and the discussion in the HTI–2 Proposed Rule at *89 FR 63628* through 89 FR 63633.

We have finalized the exception's conditions as proposed because we believe they strike the best balance we can attain at this time between the interests of actors and patients in protecting reproductive health care availability and patients' reproductive health privacy with the interests of actors, patients, and others in maintaining and building upon progress made to date toward EHI interoperability and a norm of information sharing that includes individuals being able to easily access, exchange, and use their EHI however and whenever they want. We will remain alert for signals that any type(s) of actor—not just health IT developers of certified health IT—may be attempting to misuse any of the exceptions in 45 CFR part 171. We would anticipate engaging in education and outreach as well as (where applicable) enforcement steps in response to such signals and may consider future proposals for 45 CFR part 171 in response to changing market conditions.

Comments. A few commenters stated that it is important for ASTP/ONC to address that public health use cases for reproductive health data remain relevant while that data is also protected by the Protecting Care Access Exception. The commenters stated that there may be important reasons to send reproductive health data to public health entities while at the same time segmenting that data from being used for other purposes, because that data may be critical to public health functions. Some of these commenters stated they favor provisions to ensure that reproductive health data transmitted electronically is restricted to public health use cases and may not be reused later for non-public-health purposes.

Response. We appreciate the comments. We emphasized in the HTI–2 Proposed Rule (at 89 FR 63632) that actors would continue to be subject to other Federal laws, and to State and Tribal laws. With regard to public health reporting, we stated in an information blocking FAQ (IB.FAQ43.1.2022FEB) [47] that where a law requires actors to submit EHI to public health authorities, an actor's failure to submit EHI to public health authorities could be considered an interference under the information blocking regulations. For example, many states legally require reporting of certain diseases and conditions to detect outbreaks and reduce the spread of disease. Should an actor that is required to comply with such a law fail to report, the failure could be an interference with access, exchange, or use of EHI under the information blocking regulations.[48]

Establishing or explaining which use cases represent permissible purposes for access, exchange, or use of reproductive health care EHI (or any other EHI) under independent laws that may apply to various actors in various circumstances is beyond the scope of this final rule. We refer readers to the definition of ''public health'' in 45 CFR 160.103, and extensive interpretation in the 2024 HIPAA Privacy Rule (89 FR 32976) clarifying that activities such as investigation, intervention, or surveillance in the public health context do not encompass conducting a criminal, civil, or administrative investigation into any person, or imposing criminal, civil, or administrative liability on any person for the mere act of seeking, obtaining, providing, or facilitating health care, or identifying any person for such activities, including those for which use or disclosure of PHI is prohibited by *45 CFR 164.502(a)(5)(iii).*

Comment. One commenter asked that we clearly state that information blocking requirements do not apply to non-clinical public health (*e.g.,* disease surveillance programs).

Response. Opining or advising on whether a particular type of organization or function would or would not meet the § 171.102 ''actor'' definition is beyond the scope of this final rule.

Comments. Several commenters expressed concern about their ability to ''comply'' with the proposed Protecting Care Access Exception ''requirement,'' citing a lack of capability or conflicts with state laws.

Response. Information blocking exceptions are voluntary as we have stated repeatedly over time, including in the ONC Cures Act Final Rule (85 FR 25892), HTI–1 Final Rule (89 FR at 1353, 1378, 1383, and 1392) and the HTI–2 Proposed Rule (89 FR 63638). The information blocking exceptions defined in 45 CFR part 171 offer actors certainty that any practice meeting the conditions of one or more exceptions would not be considered information blocking, but they are not mandatory.

The use of the word ''requirement'' in describing any provision of any information blocking exception in 45 CFR part 171 is not intended to imply that actors must satisfy the provision regardless of whether they wish to engage in a practice to which the exception applies. We refer to ''requirements'' as the way(s) to satisfy a condition of an exception only to make it clear that if an actor's practice does not meet what is specified (*i.e.,* required), then the actor's practice will not be covered by that exception. For example, if an actor wants to share all the EHI that they have and all laws and regulations that apply to the actor and the EHI permit it to be shared with any requestor, then no exception in 45 CFR part 171 is intended to create an affirmative obligation that the actor instead withhold EHI. Rather, an exception offers an actor who chooses to engage in a practice meeting the exception's conditions assurance that such practice will not be ''information blocking'' even though the practice may be likely to interfere with access, exchange, or use of EHI for purposes permissible under all applicable law (such as the HIPAA Privacy Rule, State or, where applicable, Tribal privacy laws).

Comment. One commenter was concerned that the regulation did not mention a date when information blocking exceptions would be ''enforceable.''

Response. The information blocking regulations in 45 CFR part 171, including the first eight exceptions, first became effective on April 5, 2021 (85 FR 70068 and 70069) and actors were subject to the regulations upon the effective date. The OIG Final Rule provisions implementing information blocking penalties (*88 FR 42826*) have been in effect since September 1, 2023. The Information Blocking Provider Disincentives Final Rule (89 FR 54662) became effective as of July 31, 2024.

The Protecting Care Access Exception will be available to actors on and after the effective date of this final rule. The finalized revisions to § 171.202(e) and § 171.204(a)(2) will also be effective on and after that date.

Comments. Several commenters made statements about what the HIPAA Rules require, permit, and do not permit with respect to sharing information related to reproductive health, and how HIPAA relates to the Protecting Care Access Exception. Some commenters encouraged working with OCR and across HHS to align the information blocking regulations with the HIPAA Rules. One commenter requested clarification that ASTP/ONC has considered and accounted for any disclosure consent that is required under changes to HIPAA as it relates to reproductive health care. One comment sought clarification of how a health care provider could get or share EHI without being a HIPAA covered entity.

Response. As we stated in the HTI–2 Proposed Rule on how the information blocking regulations operate, the information blocking regulations operate both separately and differently from the HIPAA regulations (*89 FR 63629*). The information blocking regulations are based on statutory authority separate from HIPAA. We refer actors and other persons interested in learning more about how the information blocking regulations, and particularly the exceptions, work in concert with the HIPAA Rules and other privacy laws to support health information privacy, to the discussion of this topic in the HTI–1 Final Rule at *89 FR 1351* through *1354* and the discussion in the HTI–2 Proposed Rule at *89 FR 63628* through 89 FR 63633. The 45 CFR 164.509 requirement for HIPAA covered entities and business associates to obtain attestations prior to using or disclosing PHI potentially related to reproductive health care for certain purposes is discussed at 89 FR 63628. We plan to continue to work with our federal partners, including OCR, to maintain alignment on, and promote understanding of, regulations which support the lawful access, exchange, and use of electronic health information.

Interpreting the HIPAA regulations in 45 CFR parts 160 and 164, such as by offering guidance as to when or how a health care provider might be capable of or engaged in getting or sharing EHI without also being a HIPAA covered entity, is outside the scope of this rule. We therefore refer readers with questions about HIPAA covered entities to the guidance and informational resources available from both the OCR website: (*https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html*) and the CMS website

[47] *https://www.healthit.gov/faq/would-not-complying-another-law-implicate-information-blocking-regulations.*

[48] *Ibid.*

(*https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification/hipaa/covered-entities*). Additional information about HIPAA transactions is available via the following section of the CMS website: *https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification.*

Comments. A few commenters requested that ASTP/ONC clarify the intersection of the proposed Protecting Care Access Exception with state laws and other laws such as 42 CFR part 2 or the HIPAA Privacy Rule. These commenters expressed the importance of safeguarding information concerning seeking care for substance use disorder during pregnancy.

Response. We appreciate the comments received and the insights they offer into the challenges associated with managing information concerning seeking care for substance use disorder during pregnancy. We emphasize that where otherwise applicable law prohibits a specific access, exchange, or use of information, an exception to part 171 is not necessary due to the exclusion of ''required by law'' practices from the statutory information blocking definition—as we have previously noted (for example, at *85 FR 25825*).

Any changes to or interpretation of 42 CFR part 2, which is issued by the Substance Abuse and Mental Health Services Agency (SAMHSA) pursuant to statutory authority separate from the information blocking statute, are out of scope for this final rule. Similarly, interpretation of any State or Tribal law (statute or regulation) is outside the scope of this final rule.

Interpreting or otherwise providing guidance on the HIPAA regulations in subchapter C of subtitle A of title 45 of the CFR is outside the scope of this final rule. We therefore refer readers with questions about HIPAA covered entities to the guidance and informational resources available from both the HHS OCR (*https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html*) and the CMS website (*https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification/hipaa/covered-entities*). Additional information about HIPAA transactions is available via the following section of the CMS website: *https://www.cms.gov/priorities/key-initiatives/burden-reduction/administrative-simplification.*

As noted above, we refer actors and other persons interested in learning more about how the information blocking regulations, and particularly the exceptions, work in concert with the HIPAA Rules and other privacy laws to support health information privacy, to the discussion of this topic in the HTI–1 Final Rule at 89 FR 1351 through 1354 and the discussion in the HTI–2 Proposed Rule at 89 FR 63628 through 63633. We will continue to work with our federal partners, including OCR, to promote alignment on, and understanding of, regulations which support the lawful access, exchange, and use of electronic health information.

Comments. One commenter appreciated that ASTP/ONC recognized the interplay between the proposed Protecting Care Access Exception, the existing Infeasibility Exception (particularly, the Segmentation sub-exception) and the Privacy Exception (specifically, Individual's Request Not to Share EHI sub-exception) given that advanced capabilities to easily segment data are not uniformly available for all EHR and health IT systems. Another commenter asked ASTP/ONC to clarify how the Protecting Care Access Exception would intersect with the Infeasibility Exception. Noting that the proposal indicated that the redacted information must only be that which is believed to put an individual at risk of legal action, the commenter stated it was unclear whether the Infeasibility Exception could be used with this exception when segmentation is not available and asked ASTP/ONC to clarify whether such a combination of exceptions is permitted.

Response. We appreciate the comment. As discussed above, the HTI–2 Proposed Rule's proposed revisions to the Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)) included addition of an explicit cross-reference to the Protecting Care Access Exception (§ 171.206) (89 FR 63623). In various circumstances, an actor may wish to engage in one or more practice(s) that are covered in part, but not fully covered, by the Protecting Care Access Exception. In some of these situations, such an actor may want to consider the potential certainty that could be available by satisfying a combination of the Protecting Care Access Exception and the Infeasibility Exception (§ 171.204). (We note that this is only one example where ''stacking'' of exceptions may occur; there may be a wide variety of scenarios where ''stacking'' other combinations of various exceptions with one another—or with restrictions on use or disclosure of EHI under applicable law—may occur, as we discussed in more detail in the HTI–1 Final Rule preamble, 89 FR 1353 through 1354).

The information blocking exceptions operate independently. In the HTI–2 Proposed Rule, we stated that one of the existing information blocking exceptions applicable in some circumstances where the proposed Protecting Care Access Exception could also apply is the Privacy Exception (89 FR 63631). Where facts and circumstances were such that an actor could choose to shape their practice in withholding EHI to satisfy either the Protecting Care Access Exception (if finalized) or another exception, the actor would have discretion to choose which exception they wish to satisfy. An actor's practice in such situation(s) would not need to satisfy both exceptions in order for the practice to not be considered information blocking (89 FR 63631).

b. Threshold Condition and Structure of Exception

We proposed that the § 171.206(a) *threshold* condition's requirements must be satisfied in order for any practice to be covered by the exception (89 FR 63633). To meet the condition's subparagraph (a)(1) belief requirement, we proposed that the practice must be undertaken based on a good faith belief that:

- the person(s) seeking, obtaining, providing, or facilitating reproductive health care is at risk of being potentially exposed to legal action that could arise as a consequence of particular access, exchange or use of specific EHI; and
- the practice could reduce that risk.

To satisfy the belief requirement (§ 171.206(a)(1)), we proposed that the actor's belief need not be accurate but must be held in good faith. We also sought comment, on whether actors, patients, or other interested parties may view ''good faith belief'' as a standard that is unnecessarily stringent or that could make the Protecting Care Access Exception difficult for small actors with limited resources, such as small and safety net health care providers, to confidently use. We requested input from commenters regarding concerns they might have about the ''good faith belief'' standard and how such concerns could be mitigated by the addition to § 171.206 of a presumption that an actor's belief is held in good faith.

We also sought comment about setting the belief standard at ''belief'' or ''honest belief'' as alternatives to the good faith standard, and whether those standards might help to reduce misunderstanding of § 171.206(a). We sought comment on whether to add to § 171.206 a provision to presume an actor's belief met the standard unless we have or find evidence that an actor's belief did not meet the standard at all relevant times (relevant times are those

when the actor engaged in practices for which the actor seeks application of the exception). Like ''good faith belief,'' each of ''belief'' or ''honest belief'' would be a subjective rather than an objective standard. Under either alternative, the actor's belief would not be required to be accurate but could not be falsely claimed. Unlike ''good faith belief,'' neither ''belief'' nor ''honest belief'' is a particularly long established and widely used legal standard. However, we requested input on whether these standards might help to reduce potential misunderstanding of § 171.206(a) and what would be necessary for an actor to meet the proposed ''good faith belief'' standard.

We noted that where an actor is a business associate of another actor or otherwise maintains EHI on behalf of another actor, this exception would (where its requirements are otherwise fully satisfied) apply to practices implemented by the actor who maintains EHI based on the good faith belief and organizational policy or case-by-case determinations of the actor on whose behalf relevant EHI is maintained. We proposed in the alternative to require that each actor rely only on their own good faith belief in order to implement practices covered by the Protecting Care Access Exception, including when an actor maintains EHI on behalf of other actor(s) or any other person(s).

We proposed in § 171.206(e) (89 FR 63804) to define ''legal action'' for purposes of the Protecting Care Access Exception to include any of the following when initiated or pursued against any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care: (1) civil, criminal, or administrative investigation; (2) a civil or criminal action brought in a court to impose criminal, civil, or administrative liability; or (3) an administrative action or proceeding against any person (89 FR 63639). We emphasized that the proposed Protecting Care Access Exception would apply where an actor's practice meets the § 171.206(a) *threshold* condition and at least one of the other two conditions in the exception, none of which would require the actor to quantify a degree, amount, or probability of the risk of potential exposure to legal action the actor believes in good faith exists and could be reduced by the practice to which § 171.206 applies (89 FR 63639).

We emphasized that to satisfy the proposed Protecting Care Access Exception, an actor's practice that is likely to interfere with lawful access, exchange, or use of EHI would need to fully satisfy relevant requirements of the *threshold* condition in § 171.206(a) and at least one of the other two conditions (§ 171.206(b) or § 171.206(c)).[49] Thus, a practice could satisfy the exception as proposed *only if* implemented based on an actor's good faith belief that access, exchange, or use potentially creates or increases anyone's risk of facing legal action that would be specifically based upon a person having merely sought, obtained, provided, or facilitated care that was lawful under the circumstances in which such health care was provided. The exception is not intended to apply to an actor's interference with access, exchange, or use of EHI based on an actor's belief that the practice would reduce any person's exposure to legal action or liability based on conduct that was not the mere act of seeking, obtaining, providing, facilitating, or (where the *patient protection* condition applies, potentially needing) reproductive health care that was, under the circumstances in which the conduct occurred, unlawful.

The belief requirement (subparagraph (1)) of the *threshold* condition (§ 171.206(a)) was proposed to ensure that the exception is applicable only in situations where an actor has a good faith belief that their practice of interfering with the access, exchange, or use of EHI that indicates the seeking, obtaining, providing or facilitating of reproductive health care (not with EHI access, exchange, or use in general or universally) could reduce a risk of potential exposure to legal action against identifiable persons that could otherwise arise as a consequence of the particular access, exchange or use of specific EHI that is affected by the practice. We stated (89 FR 63634) that to satisfy the § 171.206(a)(1) requirement, the actor's good faith belief would need to be that persons seeking, obtaining, providing, or facilitating reproductive health care ''are at risk'' of being potentially exposed to legal action. This does not mean that the exception would apply only where the actor is confident that legal action will follow from access, exchange, or use of EHI related to reproductive health care. ''Are at risk'' would simply mean that the risk the actor believes might arise as a consequence of the affected access, exchange, or use of EHI is one that could, to the best of the actor's knowledge and understanding, arise under law that is in place at the time the practice(s) that is based on the belief are implemented. Thus, we noted that the proposed § 171.206 exception would not apply to practices undertaken based on a hypothetical risk of exposure to legal action, such as one the actor postulates could perhaps become possible if applicable law(s) were to change in the future. Similarly, where an actor may believe a risk exists that someone could potentially be exposed to legal action but does not believe that a particular practice could achieve some reduction in that risk, the § 171.206(a)(1) requirement would not be met by (and therefore the § 171.206 exception would not apply to) that practice.

The § 171.206(a) *threshold* condition's tailoring requirement (§ 171.206(a)(2)) is intended to further restrict the exception's coverage to practices that are no broader than necessary to reduce the risk of potential exposure to legal action that the actor has a good faith belief could arise from the particular access, exchange or use of the specific EHI.

We noted that like similar provisions in other exceptions, this tailoring requirement ensures that the exception would not apply to an actor's practices likely to interfere with access, exchange, or use of all of an individual's EHI when it is only portions of the EHI that the actor believes could create the type of risk recognized by the exception. Where only portion(s) of the EHI an actor has pertaining to one or more patients pose a risk of potentially exposing some person(s) to legal action, the proposed Protecting Care Access Exception would apply only to practices affecting particular access, exchange, or use of the specific portion(s) of the EHI that pose the risk.

Data segmentation is important for exchanging sensitive health data (as noted in the ONC Cures Act Final Rule at *85 FR 25705*) and for enabling access, exchange, and use of EHI (as noted in the HTI–1 Proposed Rule at *88 FR 23874*). We noted in the HTI–2 Proposed Rule at 89 FR 63634 that we were aware of the external efforts to innovate and further develop consensus technical standards, and we are hopeful that this will foster routine inclusion of advanced data segmentation capabilities in EHR systems and other health IT over time. However, we have received public feedback (both prior to and in response to the HTI–1 Proposed Rule request for information on health IT capabilities for data segmentation and user/patient access at 88 FR 23874 and 23875) that

[49] In relevant circumstances, an actor's practice might meet *both* the § 171.206(b) *patient protection* and § 171.206(c) *care access* conditions simultaneously. But each of these conditions could also apply in circumstances where the other does not. Thus, the proposed exception is intended and designed to apply where either or both of the *patient protection* and *care access* conditions are met in complement to the § 171.206(a) *threshold condition.*

indicates that there is currently significant variability in health IT products' capabilities to segment data, such as to enable differing levels of access to data based on the user and purpose. We recognize there is a potential that some actors, who may wish to withhold specific EHI under the conditions specified in the proposed Protecting Care Access Exception (§ 171.206), may not yet have the technical capability needed to unambiguously segment the EHI for which § 171.206 would apply from other EHI that they could lawfully make available for a particular access, exchange, or use. Therefore, we proposed elsewhere in the HTI–2 Proposed Rule to modify the Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)) to explicitly provide for circumstances where the actor cannot unambiguously segment EHI that may be withheld in accordance with Protecting Care Access Exception (§ 171.206) from the EHI for which this exception is not satisfied (89 FR 63633 and 63634).

We stated (89 FR 63634) that the implementation requirement in subparagraph (a)(3) of the *threshold* condition is intended to ensure that practices are applied fairly and consistently while providing flexibility for actors to implement a variety of practices, and to do so through organizational policy or in response to specific situations, as best suits their needs. We proposed that any given practice could satisfy this implementation requirement in either of two ways. First, an actor could undertake the practice consistent with an organizational policy that meets the requirements proposed in § 171.206(a)(3)(i). To satisfy the proposed requirement in this first way, the organization's policy would need to identify the connection or relationship between the particular access, exchange, or use of the specific EHI with which the practice interferes and the risk of potential exposure to legal action that the actor believes could be created by such access, exchange, or use. The policy would also need to be:

- in writing;
- based on relevant clinical, technical, or other appropriate expertise;
- implemented in a consistent and non-discriminatory manner; and
- structured to ensure each practice implemented pursuant to the policy satisfies paragraphs (a)(1) and (a)(2) as well as at least one of the conditions in paragraphs (b) or (c) of § 171.206 that is applicable to the prohibition of the access, exchange, or use of the EHI.

We stated that in order to ensure each practice implemented pursuant to the policy applies only to the particular access, exchange, or use scenario(s) to which at least one of the conditions in paragraphs (b) or (c) of § 171.206 is applicable, a policy would need to specify the facts and circumstances under which it would apply a practice. To clarify, we note that a policy would need to specify the facts and circumstances under which the policy would apply to a practice. Such specifications need not be particularized to individual patients but would need to identify with sufficient clarity for the actor's employees and business associates (or other contractors, as applicable) to accurately apply the practice only to relevant access, exchange, or use scenarios. The types of facts or circumstances the policy might need to specify may vary, but we believe might often include such details as to what EHI (such as what value set(s) within what data element(s)) and to what scenario(s) of access, exchange, or use the policy will apply to a practice.

We noted (89 FR 63634) that there may be value sets currently available or in development by various parties that may help an actor to identify what EHI within the actor's EHR or other health IT systems indicates care meeting the reproductive health care definition at § 171.102. However, we did not propose to limit the application of the exception to any specific value set(s). Because version updates of such value sets, or new value sets, may develop more rapidly than adoption or reference of them in regulations could occur, we noted that we believed the intended operation of the exception will be best served by leaving actors flexibility to identify, document in their organizational policy or case-by-case determination(s), and then use whatever value set(s) comport with their belief that a risk of potential exposure to legal action (consistent with the exception's conditions) could be created or increased by sharing specific EHI indicating or (where the *patient protection* condition applies) potentially related to reproductive health care.

The proposed provision in paragraph (a)(3)(ii) offers actors the second of the two ways to satisfy subparagraph (a)(3): by making determination(s) on a case-by-case basis. As we discussed (89 FR 63635), to satisfy paragraph (a)(3)(ii), any case-by-case determination would need to be made in the absence of an organizational policy applicable to the particular situation and be based on facts and circumstances known to, or believed in good faith by, the actor at the time of the determination. A practice implemented based on the determination must also be tailored to reduce the risk of legal action the actor has a good faith belief could result from access, exchange, or use of the EHI. And the practice must be no broader than necessary to reduce the risk of potential exposure to legal action (paragraphs (a)(1) and (a)(2)).

Finally, to meet paragraph (a)(3)(ii), the determination made on a case-by-case basis would need to be documented either before or contemporaneous with beginning to engage in any practice(s) based on the determination (89 FR 63634 and 63635). The documentation of the determination must identify the connection or relationship between the interference with access, exchange, or use of EHI indicating or related to reproductive health care and the risk of potential exposure to legal action. By identifying the connection or relationship, this documentation would explain what risk the actor believes the practice(s) will mitigate (89 FR 63635).

We explained (89 FR 63635) that the proposed § 171.206(a)(3) implementation requirement's optionality would support the actor's interest in having flexibility to address both relatively stable and more dynamic facts and circumstances. Each of the options is intended to balance this interest of the actor with the interests of others, including the actor's current and potential competitors, in ensuring that any information blocking exception does not apply to practices that are not necessary for the specific purpose(s) the exception is designed to serve. The subparagraph (a)(3)(i) organizational policy provision would allow actors to apply relevant expertise available at the time of creating and updating organizational policies to craft a policy that suits their circumstances (such as technological capabilities and staffing and the types of scenarios they have experienced or expect to experience, perhaps with some regularity). The case-by-case determination provision (subparagraph (a)(3)(ii)) ensures the proposed exception would be available for all actors across the full array of facts and circumstances they may encounter, including unanticipated ones.

We also sought comment (89 FR 63635) on adding to the § 171.206(a) *threshold* condition an additional requirement that the actor's practice must not have the effect of increasing any fee for accessing, exchanging, or using EHI that the actor chooses to seek from an individual (as defined in § 171.202(a)) or counsel representing the individual in an action or claim contemplated, filed, or in progress with

a federal agency, in federal court, or a court in the jurisdiction where care was provided. We proposed this requirement in the alternative. This alternative proposal would mean that the proposed exception would not be met by an actor's practice that had such effect even if any fee that the actor chooses to charge for access, exchange, or use of EHI would, after such increase, continue to satisfy the Fees Exception (§ 171.302).

The following is a summary of the comments we received and our responses, organized by specific subparagraph within the § 171.206(a) *threshold* condition.

Threshold Condition, General

Comments. One commenter advocated a two-step approach so the actor who ''owns'' the EHI would be the first to decide whether to invoke the exception. If such actor decided to withhold EHI based on the exception, then the commenter stated a business associate or other actor performing services on behalf of the ''owning'' actor should be bound by that decision because it is acting on behalf of the ''owning'' actor. The commenter stated that if the ''owning'' actor does not invoke the exception, the business associate or other actor performing services should be able to make an independent decision as to whether to invoke the exception. Some commenters suggested that only actors who are health care providers should be able to utilize the exception although they did not expressly address whether they believed another actor who holds EHI on behalf of such a provider would be required to follow the provider's decision.

Response. We appreciate the opportunity to clarify that, like all information blocking exceptions, the Protecting Care Access Exception, as proposed and as finalized, is voluntary for any actor. We interpret the one commenter's references to an actor ''owning'' EHI as the commenter's shorter way of saying the actor who maintains EHI on or on whose behalf another actor maintains or otherwise handles EHI. We decline to adopt at this time a requirement that an actor performing services on behalf of another follow the decision of the actor who maintains EHI, or on whose behalf EHI is maintained, to withhold EHI consistent with the Protecting Care Access Exception. A *mandate* that any actor conform their practices to an exception based on another actor's choice to do so would be both unprecedented in 45 CFR part 171 and beyond the scope of any alternative provision for § 171.206 on which we solicited comments in the HTI–2 Proposed Rule.

We proposed, and have finalized, the Protecting Care Access Exception to be available to all actors. We did not propose an option or alternative for the exception to be available only to certain type(s) of actor. Moreover, we believe that making the Protecting Care Access Exception available only to health care providers would add unnecessary complexity to the information blocking regulations while potentially failing to support providers' ability to implement practices consistent with the exception. If the Protecting Care Access Exception were not equally available to health IT developers of certified health IT and HINs/HIEs on whom health care providers often rely for many or all of their health IT, these actors would be left with the same uncertainty they have experienced to date about potentially implicating the information blocking definition. For example, a health IT developer of certified health IT or a HIN/HIE would be left with uncertainty about implicating the information blocking definition if they were to limit access, exchange, or use of reproductive health care EHI at the direction of a health care provider, but the Protecting Care Access Exception were applicable only to practices undertaken by health care providers.

Comments. Several comments requested that we indicate whether care would or would not be lawful in a variety of scenarios involving various intersections of Federal law with State(s)' laws, State(s)' law with Tribal law, or Federal and Tribal law with State(s)' law. One commenter suggested that carefully defining these would ensure that the exception is carefully targeted in scope. One commenter suggested we remove references to care being lawful where furnished, citing scenarios where a patient may seek lawful follow-on care for complications of self-administered care that the commenter asserted is not required to be reported to law enforcement under state law.

Response. Opining on what care is or is not lawful under what specific circumstances, or advising on which laws take precedence in any specific fact pattern, is beyond the scope of this final rule. The exception is designed to accommodate the wide variety of scenarios where reproductive health care is (or the actor may for purposes of the exception presume it is) lawful under the circumstances in which it is provided. We decline at this time to remove references to care being lawful where furnished, because such references provide clarity to actors regarding our intent with regards to the applicability of the Protecting Care Access Exception. For example, we noted in the HTI–2 Proposed Rule that the exception is not intended to apply, and as finalized in this rule it does not apply, to an actor's attempt to avoid consequences for the actor's own wrongdoing (89 FR 63636) or limit production of (otherwise discoverable) EHI in a civil, criminal, or administrative action that is brought in the jurisdiction where a health care provider provided health care that a patient (or their representative) alleges was negligent, defective, substandard, or otherwise tortious (89 FR 63632).

Threshold Condition—Belief Requirement

Comments. Many commenters supported the proposed exception, explicitly as proposed or without further comments. Some of them expressly supported the good faith belief standard. A few commenters noted that ''good faith belief'' is a subjective standard and supported the use of a subjective standard. A few commenters expressed support for the alternative standard of ''belief'' or ''honest belief'' rather than ''good faith belief'' for purposes of the *threshold* condition at § 171.206(a)(1). These commenters stated that using ''belief'' or ''honest belief'' as the standard would reduce potential misunderstandings while encouraging appropriate use of the exception by providing actors with as much flexibility as possible to protect patients and providers. One commenter suggested that good faith belief and honest belief were synonymous but in either case, ASTP/ONC should state that the standard is subjective. A few commenters asked for outreach and education to promote accurate understanding of the standard and actor confidence in their ability to use the exception.

Response. We thank commenters for their feedback. Having reviewed and considered all comments received in response to the proposal, we have finalized § 171.206(a)(1) as proposed. As we stated in the HTI–2 Proposed Rule, to satisfy the § 171.206(a)(1) belief requirement, the actor's belief need not be accurate (89 FR 63633). We have updated the regulatory text to state that for purposes of the Threshold Condition, an actor who is a business associate of or who otherwise maintains EHI on behalf of another actor may rely on the good faith belief (consistent with § 171.206(a)(1)) and organizational policy (consistent with § 171.206(a)(3)) of the actor on whose behalf the relevant EHI is maintained. As noted in the HTI–

2 Proposed Rule and above, unlike ''good faith,'' neither ''belief'' nor ''honest belief'' is a particularly long established or widely used legal standard (89 FR 63633). We also affirm that the finalized ''good faith belief'' standard is a subjective standard. As we noted in the HTI–2 Proposed Rule preamble, the alternatives (''belief'' and ''honest belief'') were, like the ''good faith belief'' standard, subjective standards (89 FR 63633). Also, we provide in response to other comments (below) additional discussion to help actors understand what it means, in specific context and for the specific purpose of an actor's practice meeting the § 171.206 exception's conditions, to hold a belief in good faith.

Comments. Several comments supported adding a provision to presume an actor's belief met the standard unless we have or find evidence that an actor's belief did not meet the standard at all relevant times. Commenters stated that this provision would promote alignment with HIPAA, reduce confusion in light of rapidly shifting state laws, and strengthen the protections of this new exception. One commenter asked that this presumption of good faith would only be able to be rebutted with clear and convincing evidence, which they noted is a well-established legal standard.

Response. We appreciate the comments advocating for a presumption provision for ''good faith belief.'' Commenters did not supply reasons supporting the assertion that a presumption provision for ''good faith belief'' would align with HIPAA as there is no generally applicable presumption of good faith in the HIPAA Rules. Having reviewed and considered all comments received in response to the proposed Protecting Care Access Exception, we have decided not to adopt in regulation an explicit presumption for ''good faith belief'' at this time. Instead, we emphasize, as we stated in the HTI–2 Proposed Rule, that ''good faith belief'' is a subjective standard. To meet this standard for purposes of an actor's practice meeting the conditions of the finalized Protecting Care Access Exception, an actor's belief need not ultimately be accurate; it only need to be held in good faith. In response to concerns about how an actor would demonstrate good faith, we note that the § 171.206(a) *threshold* requirement is designed to function as a cohesive whole, within which one of the functions of the paragraph (3)(i) requirement that an organizational policy be in writing is to document what the actor believes. This includes identifying the connection between the particular access, exchange, or use scenarios for specific EHI with which the practice based on the policy interference and the risk of potential exposure to legal action the actor has a good faith belief could be created by such access, exchange, or use of that EHI. The paragraph (3)(ii) requirement that any case-by-case determination be documented either before or contemporaneous with the actor beginning to engage in any practice(s) based on the determination serves the same purpose.

We also note that whether a belief is held in good faith for purposes of § 171.206(a) may be partly proven by the absence of indicators of bad faith, such as indicators that the actor's claim of having met the exception may in fact be pretextual. One illustrative example or indicator of bad faith (of which there could be many more) would be if the actor in practice only withholds EHI based on their purported belief when the EHI is requested by a competitor or potential competitor of the actor, while not withholding EHI from otherwise similarly situated non-competitor requestors. By contrast, indicators of good faith would include, among others, that the actor applies the same practices to all requests from any and all similarly situated requestors, with no difference in applying the practice to requests from competitors or potential competitors in comparison to affiliates or other non-competitors. For these reasons, we have decided that that the subjective ''good faith belief'' standard we have finalized properly accommodates actors who are unsure of their risks.

Comments. One commenter suggested that the subjective good faith standard should be harmonized with the objective standard used in the 2024 HIPAA Privacy Rule. One commenter stated that the ''good faith belief'' threshold was not high enough, especially when EHI is requested for treatment.

Response. While ''good faith belief'' is a subjective standard (*89 FR 63633*), we believe that a subjective standard is important to offer actors, including health care providers, the flexibility they need to care for their patients through promoting effective relationships with them based on mutual trust. Given the substantive policy approach differences between information blocking exceptions and the HIPAA Privacy Rule's permitted and prohibited uses and disclosures, we note that use of a subjective standard for this voluntary exception within the information blocking regulations is fully compatible with the HIPAA Privacy Rule's use of objective standards in prohibiting the use or disclosure of PHI for specific activities. The Protecting Care Access Exception is intended to be available and usable for all actors, including small actors with limited resources (such as safety net health care providers) who might struggle to evaluate the many particular EHI sharing scenarios that they encounter against an objective standard. Moreover, the exception is not relevant where the EHI involved is also PHI subject to a prohibited use or disclosure under the HIPAA Privacy Rule. This is because where applicable law prohibits a specific access, exchange, or use of information, the information blocking regulations consider the practice of complying with such laws to be ''required by law.'' Practices that are ''required by law'' are not considered ''information blocking'' (*see* the statutory information blocking definition in section 3022(a)(1) of the PHSA and the discussion in the ONC Cures Act Final Rule at 85 FR 25794).[50]

Comments. One commenter stated that they approve of ASTP/ONC's choice of ''could reduce that risk'' rather than ''would,'' ''likely would,'' or ''should,'' in paragraph (a)(1)(ii) of the Protecting Care Access Exception, referring to the practice undertaken based on the actor's good faith belief that specific practices likely to interfere with access, exchange, or use of electronic health information could reduce the risk of being potentially exposed to legal action. The commenter stated that the approach differs from ASTP/ONC (and often CMS and other HHS partners') practice of trying to maximize data sharing while considering privacy concerns that might inhibit sharing because using the words ''could reduce that risk'' make it less likely that data will be shared, compared to using words such as ''would,'' ''likely would,'' or ''should.''

Response. We appreciate the comments and the commenter's support. As we explained above, we believe it is reasonable and necessary for an actor to restrict access, exchange, or use of specific EHI that indicates or (under § 171.206(b)) is potentially

[50] We refer readers interested in learning more about the interaction of the information blocking regulations with the HIPAA Rules and other laws protecting individuals' privacy interests to the discussion of the Privacy Exception in the ONC Cures Act Final Rule (85 FR 25642, 85 FR 25845 through 25859) and the discussion of this topic in the HTI–1 Final Rule preamble (89 FR 1351 through 1354). We also highlight the availability of additional resources through our website (to quickly navigate to the information blocking section of HealthIT.gov, the following URL can be entered into a browser address bar or search bar: *https://www.healthit.gov/informationblocking*).

related to reproductive health care so that health care providers continue to use modern, interoperable health IT that better promotes patient safety than would paper or hybrid recordkeeping methods.

Comments. No comments were received on the possible alternative proposal that each actor be required to rely only on its own good faith belief.

Response. We have finalized, as proposed, that where an actor is a business associate of another actor or otherwise maintains EHI on behalf of another actor, the Protecting Care Access Exception applies (where its requirements were otherwise fully satisfied) to practices implemented by the actor who maintains EHI based on the good faith belief and organizational policy or case-by-case determinations of the actor on whose behalf relevant EHI is maintained (*89 FR 63633*). As discussed in the HTI–2 Proposed Rule, this means that where an actor is a business associate or otherwise maintains EHI on behalf of another actor, the finalized Protecting Care Access Exception (§ 171.206) will be applicable (where its requirements are otherwise fully satisfied) to practices implemented by the actor who maintains EHI based on the good faith belief and organizational policy or case-by-case determinations of the actor on whose behalf relevant EHI is maintained. We have clarified this finalized policy by adding this wording as § 171.206(a)(4), so that this flexibility is immediately clear to actors from the face of the regulatory text.

We clarify, however, that where an actor is a business associate or otherwise maintains EHI on behalf of an entity that is not an actor (as defined in § 171.102), the Protecting Care Access Exception's *threshold* condition (§ 171.206(a)) will be satisfied only where the actor who maintains EHI holds a good faith belief consistent with § 171.206(a)(1) and implements a practice consistent with either § 171.206(a)(2)(i) or (ii). We specifically proposed that an actor could rely on the good faith belief and organizational policy or case-by-case determinations of another § 171.102 actor (89 FR 63633). We did not propose that an actor could rely on belief, policy, or case-by-case determination of *any* entity on behalf of whom the actor may maintain EHI. An entity that is not an actor subject to the information blocking regulations may be unlikely to address information blocking regulations in any of their policies, procedures, or regulatory compliance plans. Therefore, we believe that, *when* an actor is maintaining EHI on behalf of a non-actor entity, limiting application of the finalized Protecting Care Access Exception to practice(s) undertaken based on the actor's own good faith belief and implemented consistent with the actor's own organizational policy or case-by-case determination is an important safeguard against attempts to misuse the exception (by accident or otherwise).

i. Threshold Condition—Tailoring Requirement

Comment. One commenter noted that requiring the practice be no broader than necessary to reduce the risk seemingly preempts health care providers from leveraging organization wide policies in order to avail themselves of this exception.

Response. The tailoring requirement in § 171.206(a)(2), like similar provisions in other exceptions, ensures that the exception will not apply to an actor's practices likely to interfere with access, exchange, or use of all of an individual's EHI when it is only portions of the EHI that the actor believes could create the type of risk recognized by the exception. Where only portion(s) of the EHI an actor has pertaining to one or more patients pose a risk of potentially exposing some person(s) to legal action, the proposed Protecting Care Access Exception would apply only to practices affecting access, exchange, or use of the specific portion(s) of the EHI that pose the risk. Individuals' EHI will often include a wide range of care types, many of which an actor would seem unlikely to have a good faith belief could expose anyone involved in the care to a risk of legal action *as defined in § 171.206(e).* We emphasize that the finalized Protecting Care Access Exception does *not* apply to an actor's interference with access, exchange, or use of EHI based on an actor's belief that the practice would reduce any person's exposure to legal action or liability based on conduct *other than* the mere act of seeking, obtaining, providing, facilitating, or (where the *patient protection* condition applies) potentially needing, reproductive health care that under the circumstances was, or (where the *patient protection* condition applies) would have been, lawful.

When read as a whole, including the option for an actor's practice to satisfy the § 171.206(a)(3) implementation requirement by implementing the practice based on an organizational policy consistent with § 171.206(a)(3)(i), we believe the finalized *threshold* condition (§ 171.206(a)) provides adequate flexibility for actors who wish to do so to implement a practice based on organizational policy. As we explained in the preamble proposing § 171.206(a)(3)(i), a policy's specifications need not be particularized to individual patients (89 FR 63634). We clarify that an organizational policy's specifications would also not need to be particularized to individual requests for access, exchange, or use of EHI in order to satisfy the requirements of § 171.206(a)(3)(i). For additional explanation of § 171.206(a)(3)(i) and (ii), we refer readers to the HTI–2 Proposed Rule preamble at 89 FR 63634 through 63635.

Comments. One commenter generally supported the Protecting Care Access Exception but expressed concern about how the tailoring requirement may be interpreted and enforced given the broad definition of reproductive health care. The commenter asserted that nearly every patient record contains information about reproductive health care under the HIPAA definition, which may make it difficult to tailor EHI. The commenter therefore asked that ASTP/ONC be flexible in its interpretation and enforcement of the tailoring practices, considering the breadth of the new HIPAA regulatory amendments and the state laws at issue. If ASTP/ONC is expecting hospitals to tailor their practices in a certain manner, the commenter asked ASTP/ONC to provide further information and resources on what constitutes tailoring. The commenter also noted the limited feasibility of data segmentation. Another commenter acknowledged the potential challenges for Health IT developers in generating the technological capabilities to meet the requirements of the Protecting Care Access Exception including that the practice is tailored to be no broader than necessary to reduce the risk of potential legal exposure.

Response. In context of the comment about whether ASTP/ONC may be expecting hospitals to tailor their practices in a certain manner, we interpret ''manner'' to mean particular health IT functionalities or workflows. We do not read ''manner'' in this context to mean by way of value set(s) within data elements specifically because we had indicated in the HTI–2 Proposed Rule that we did not propose to limit the application of the Protecting Care Access Exception to any specific value set(s) (89 FR 63634). We have not specified that any actor have or use certain functionalities or workflows in order to satisfy the § 171.206(a)(2) tailoring requirement. We refer readers to our explanation in the HTI–2 Proposed Rule (89 FR 636333) that the (§ 171.206(a)(2)) tailoring requirement is intended to restrict the exception's coverage to

practices that are no broader than necessary to reduce the risk of potential exposure to legal action.[51] We emphasize that, like similar provisions in other exceptions, this tailoring requirement ensures that the exception would not apply to an actor's practices likely to interfere with access, exchange, or use of all of an individual's EHI when it is only portions of the EHI that the actor believes could create the type of risk recognized by the exception. Where only portion(s) of the EHI an actor has pertaining to one or more patients pose a risk of potentially exposing some person(s) to legal action, the proposed Protecting Care Access Exception would apply only to practices affecting particular access, exchange, or use of the specific portion(s) of the EHI that pose the risk.

In our discussion of the § 171.206(a) *threshold* condition's tailoring requirement (§ 171.206(a)(2)) in the HTI–2 Proposed Rule, we noted the importance of data segmentation for exchanging sensitive health data and enabling access, exchange, and use of EHI (*89 FR 63634*). We stated that we are aware of external efforts to innovate and mature consensus technical standards, and we hope this will foster routine inclusion of increasingly advanced data segmentation capabilities in more EHR systems and other health IT over time (*89 FR 63634*). At the same time, we also stated that public feedback has indicated significant variability in health IT products' capabilities to segment data, such as to enable differing levels of access to data based on the user and purpose. Given this varying capability, we acknowledged that some actors who may wish to withhold specific EHI under the conditions specified in the proposed Protecting Care Access Exception (§ 171.206) may not yet have the technical capability needed to unambiguously segment the EHI for which § 171.206 would apply from other EHI that they could lawfully make available for a particular access, exchange, or use (*89 FR 63634*). We therefore proposed to modify the Infeasibility Exception's segmentation condition (§ 171.204(a)(2)) to explicitly provide for circumstances where the actor cannot unambiguously segment EHI that may be withheld in accordance with Protecting Care Access Exception (§ 171.206) from the EHI for which this exception is not satisfied. We refer readers to discussion of the finalized § 171.204(a)(2) modification of this final rule preamble. We also refer readers, as mentioned previously, to the discussion in the HTI–1 Final Rule of how combination(s) of exceptions may be used when an actor wishes to engage in one or more practices that are covered in part (but not fully covered) by one exception (89 FR 1353 and 1354). We will continue working with interested parties and the regulated community to promote understanding and foster all actors' compliance with the information blocking regulations. Details of the enforcement process for actors who may be found to have engaged in information blocking are outside the scope of this rulemaking.

ii. Threshold Condition—Implementation Requirement

Comments. One comment noted the importance of a provider being able to implement the exception as part of an organizational policy because it is infeasible and a paperwork burden for providers to individually mark charts or data elements as sensitive. Another comment expressed appreciation that providers would be able to limit access to reproductive EHI as part of following organizational policies that are based on their expertise and suit their circumstances (such as technological capabilities, staffing, and the types of scenarios they have experienced or expect to experience) in addition to the case-by-case basis. Another commenter thought that the language of the exception contemplates workflows where actors are making manual decisions to withhold or release data but suggested that in practice, most of these decisions are likely to be made programmatically by EHRs and other certified health IT noting that the actors would be constrained by their technology.

Response. We appreciate the comments. We agree on the importance of having the option of implementing the exception as a part of an organizational policy. We explained (89 FR 63634) that the implementation requirement in subparagraph (a)(3) of the *threshold* condition is intended to ensure that practices are applied fairly and consistently while providing flexibility for actors to implement a variety of practices, and to do so through organizational policy or in response to specific situations, as best suits their needs. We have finalized subparagraph (a)(3) of the *threshold* condition as proposed (89 FR 63804). We refer readers to our discussion of what an organizational policy needs to specify, which also notes that a policy need not be particularized to individual patients in order to be consistent with subparagraph (a)(3)(i). Furthermore, we discussed in the HTI–2 Proposed Rule that we recognize there is currently significant variability in health IT products' capabilities to segment data and thus we finalized in this final rule modifications to the Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)) to explicitly provide for circumstances where the actor cannot unambiguously segment EHI that may be withheld in accordance with the Protecting Care Access Exception (§ 171.206) from the EHI for which this exception is not satisfied.

iii. Reproductive Health Care Definition

In the HTI–2 Proposed Rule, we proposed that the exception would rely on the ''reproductive health care'' definition in 45 CFR 160.103 and therefore proposed to add to § 171.102 the following: ''Reproductive health care is defined as it is in 45 CFR 160.103'' (89 FR 63633). We referred readers to 45 CFR 160.103 or 89 FR 32976 for that definition, which became effective for purposes of the HIPAA Privacy Rule on June 25, 2024. (89 FR 63633).[52] We also referred readers interested in learning more about this definition to 89 FR 33005 through 33007 for the 2024 HIPAA Privacy Rule's preamble discussion of the ''reproductive health care'' definition (89 FR 63633).

Comments. Several commenters supported use of the substance of the 45 CFR 160.103 definition but recommended that we separately adopt the same definition for purposes of the Protecting Care Access Exception (§ 171.206), instead of cross-referencing the definition as proposed. One commenter stated that separate adoption of the same definition would improve certainty for actors. A number of commenters expressing support for adopting the definition asked that we clarify specific types of services that fall within the ''reproductive health care'' definition. A few comments expressing opposition to the exception also noted that the 45 CFR 160.103 definition, on

[51] The tailoring requirement of the § 171.206(a) threshold condition does not include specifications that vary based on whether the actor falls into a specific category (such as health care provider) or is of a particular type of entity within any given category (such as ''hospital'' or ''skilled nursing facility'' within the health care provider category).

[52] The addition of the ''reproductive health care'' definition to 45 CFR 160.103 was reflected in the Electronic Code of Federal Regulations (eCFR) system at *https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-160/subpart-A/section-160.103* at the time the HTI–2 Proposed Rule was issued and remained available there at the time this final rule was issued. (The eCFR is a continuously updated online version of the CFR. Please *see* the following website for more information about the eCFR system: *https://www.ecfr.gov/reader-aids/using-ecfr/getting-started.*) The printed annual edition of Title 45 is revised as of October 1 of each year.

which we proposed the exception would rely, was too expansive and would encompass procedures that the commenters did not consider reproductive health care. Several commenters expressing support for the exception stated the 45 CFR 160.103 definition is appropriately broad or enables the exception to address their information blocking concerns. A few commenters asked or recommended that we clarify whether the definition of reproductive health care encompasses care that renders a person incapable of becoming pregnant, or that affects the health of individuals already incapable of becoming pregnant in matters relating to their reproductive system and to its functions and processes. Some commenters asked that we add language that outlines that any actor who, in good faith, adopts an expansive interpretation of reproductive health care be covered by the Protecting Care Access Exception.

Response. Instead of adopting the same definition by cross-reference to 45 CFR 160.103, as shown in draft regulatory text in the HTI–2 Proposed Rule (89 FR 63802), we are finalizing in § 171.102 the substance of the definition of ''reproductive health care'' that is in 45 CFR 160.103. By separately codifying a substantively identical definition, we are adopting the same definition we proposed to apply for purposes of the Protecting Care Access Exception but severing reliance on the text of 45 CFR 160.103.

As finalized, the ''reproductive health care'' definition at § 171.102 mirrors the 45 CFR 160.103 definition of ''reproductive health care.'' Readers may find it helpful to review the non-exhaustive list of examples that fit within the definition provided at 89 FR 33006 of the 2024 HIPAA Privacy Rule's preamble discussion of the ''reproductive health care'' definition (89 FR 63633). We further note that in order to determine whether care meets the ''reproductive health care'' definition for purposes of applying the Protecting Care Access Exception it is not necessary to assess whether the care was appropriate. A health care professional's or organizational health care provider's obligations to provide clinically appropriate care according to applicable standards of care is addressed by laws separate and operating independently from 45 CFR part 171.

c. Patient Protection Condition

We explained (89 FR 63635) that the *patient protection* condition in paragraph (b) of § 171.206 could be met by practices implemented for the purpose of reducing the patient's risk of potential exposure to legal action (as legal action would be defined in § 171.206(e)). Further narrowing the practices that could satisfy the condition, paragraph (b)(1) would require that the practice affect only specific EHI (the data point or points) that the actor in good faith believes demonstrates, indicates, or would carry a substantial risk of supporting a reasonable inference that the patient has: (1) obtained reproductive health care that was lawful under the circumstances in which such care was provided; (2) inquired about or expressed an interest in seeking reproductive health care; or (3) or has any health condition(s) or history for which reproductive health care is often sought, obtained, or medically indicated. The HTI–2 Proposed Rule preamble inadvertently included (at 89 FR 63509 and 89 FR 63635) the words ''particular demographic characteristics or'' preceding ''health condition(s) or history.'' The words ''particular demographic characteristics or'' did not appear in the proposed text of 45 CFR 171.206(b)(1)(iii) (89 FR 63804) and would, we believe, be superfluous considering the proposed wording for 45 CFR 171.206(b)(1)(iii).

For purposes of § 171.206, we would interpret ''lawful under the circumstances in which it was provided'' to mean that when, where, and under relevant circumstances (such as, for health care, the patient's clinical condition and a rendering health care provider's scope of practice) the care was:

- not prohibited by Federal law and lawful under the law of the jurisdiction in which it was provided; or
- protected, required, or authorized by Federal law, including the United States Constitution, in the circumstances under which such health care is provided, regardless of the state in which it is provided.

Where care is not prohibited by Federal law and is permitted under the law of the jurisdiction in which it is provided, we would consider the care lawful regardless of whether the same care would, under otherwise identical circumstances, also be unlawful in other circumstances (for instance, if provided in another jurisdiction).

We noted (89 FR 63635) that the *patient protection* condition proposed in § 171.206(b) would provide the actor discretion and flexibility over time to determine which EHI poses a risk of potential exposure to legal action. At the same time, the § 171.206(b)(1) requirement that the practice ''affect only the access, exchange, or use of specific electronic health information the actor believes could expose the patient to legal action'' because it shows or carries a substantial risk of supporting an inference of one of the things described in subparagraphs (i) through (iii) would preserve the expectation that the actor would share other EHI that the actor does not believe poses such a risk unless another exception applies, or sharing restriction(s) under other law apply, to that other EHI in relevant circumstances.

We proposed that even when an actor has satisfied the requirements in paragraph (b)(1), the practice would be subject to nullification by the patient if the patient explicitly requests or directs that a particular access, exchange, or use of the specific EHI occur despite any risk(s) the actor has identified to the patient. This requirement (which we proposed in paragraph (b)(2)) is intended to respect patients' autonomy to choose whether and when to share their own EHI. The requirement would prevent the exception from applying where an actor is attempting to substitute their judgment or tolerance of risks to the patient for the patient's own judgment.[53]

We clarified (89 FR 63636) in proposed paragraph (b)(3) that for purposes of the *patient protection* condition, ''patient'' means the natural person who is the subject of the electronic health information, or another natural person referenced in, or identifiable from, the EHI as a person who has sought or obtained reproductive health care. We proposed to also recognize as ''patients,'' for purposes of this condition, natural persons other than the natural person who is the subject of the EHI because we are aware that there may be times when information about a parent's

[53] We stated (89 FR 63635) that the *patient protection* condition in § 171.206(b) would apply to practices implemented for the purpose of reducing the patient's risk of potential exposure to legal action (as ''legal action'' would be defined in § 171.206(e)). The *care access* condition in § 171.206(c) would apply to practices an actor implements to reduce potential exposure to legal action based on the mere fact that reproductive health care occurred for persons, other than the person seeking or receiving care, who provide care or are otherwise involved in facilitating the provision or receipt of reproductive health care that is lawful under the circumstances in which it is provided. In some circumstances, an actor's practice might meet both the § 171.206(b) *patient protection* and § 171.206(c) *care access* conditions simultaneously. But each of these conditions could also apply in circumstances where the other does not. Thus, we noted that the proposed Protecting Care Access Exception is intended and designed to apply where either or both of the *patient protection* and *care access* conditions are met in complement to the § 171.206(a) *threshold* condition.

reproductive health care is included in the EHI of a child. (For example, a child's parent is often identified in or identifiable through the child's EHI.)

We noted that the *patient protection* condition, and generally the Protecting Care Access Exception, are not intended to permit any actor to avoid legal consequences resulting from malpractice or their own wrongdoing. The exception is also not intended to have any effect on any obligation an actor has to comply with disclosure requirements under Federal, State, or Tribal law that applies to the actor. Even where an actor could deny any given access, exchange, or use of EHI for permissible purposes consistent with an information blocking exception, the actor who is a HIPAA covered entity or business associate would still have to comply with the 45 CFR 164.524 individual right of access, and any actor would still have to comply with other valid, applicable law compelling the actor to make the EHI available for permissible purposes.[54] For example, the actor would still need to comply with applicable legal discovery rules and judicial orders issued by a court of competent jurisdiction. Non-compliance with such other laws could subject the actor to sanctions under those other laws regardless of whether the actor's practice would also be considered information blocking or would instead be covered by an exception set forth in any subpart of 45 CFR part 171.

We also considered, and proposed in the alternative (89 FR 63636), adding one or more of the following explicit requirements to the *patient protection* (§ 171.206(b)), *care access* (§ 171.206(c)), or *threshold* (§ 171.206(a)) condition(s) so that to be covered by the exception the actor's practice must not:

- if undertaken by any actor that is also a HIPAA covered entity or business associate, delay beyond the time allowed under 45 CFR 164.524 or otherwise interfere with any request for access, exchange, or use of EHI that implicates the HIPAA Privacy Rule's individual right of access in a manner or to an extent that would constitute non-compliance with 45 CFR 164.524;
- deny the individual (as defined in § 171.202(a)(2)) or an attorney representing the individual access, exchange, or use of EHI for purposes of considering, bringing, or sustaining any claim for benefits under any federal law or any action against the actor under administrative, civil, or criminal (including discovery and other procedural) law of the jurisdiction in which care indicated by the EHI was provided;
- interfere with any use or disclosure of EHI required by subpart C of 45 CFR part 160 as it applies to actions by the Secretary (or by any part of HHS) with respect to ascertaining compliance by covered entities and business associates with, and the enforcement of, applicable provisions of 45 CFR parts 160, 162, and 164; or
- prevent any EHI's use by or disclosure to a federal agency or a state or tribal authority in the jurisdiction where health care indicated by the EHI was provided, to the extent such use or disclosure is permitted under 45 CFR parts 160 and 164.

We stated that each (or any) of these requirements would function as a limit on the applicability of the exception and mean that practices not meeting the exception for those reasons could constitute information blocking in addition to potentially violating any other law. (Due to the substantial variation across individual actors' circumstances, it would be impossible to maintain in the text of 45 CFR part 171 an accurate, comprehensive catalog of all other laws that could be implicated by an actor's practices otherwise consistent with any exception set forth in subparts B, C, or D of 45 CFR part 171.)

We solicited comments on the proposed *patient protection* condition, and the Protecting Care Access Exception generally, including whether commenters would recommend we add to the Protecting Care Access Exception any or all of the potential additional limits on applicability of the proposed Protecting Care Access Exception (§ 171.206) that we proposed in the alternative.

Any actor(s) wishing to engage in any applicable practice(s) and avail themselves of the certainty offered by the Protecting Care Access Exception (§ 171.206) that such practice(s) will not be considered ''information blocking'' as defined in § 171.103 will need to remember that to be covered by the exception a practice meeting either (or both) of the *patient protection* (§ 171.206(b)) and *care access* (§ 171.206(c)) condition(s) of the exception must also satisfy the *threshold* condition (§ 171.206(a)) or *care access* condition. Where an actor's practice satisfies the *threshold* condition's implementation requirement ((§ 171.206(a)(3)) by being implemented consistent with an organizational policy meeting subparagraph (i) of the requirement, the actor's crafting and documentation of their policy would present an efficient opportunity to address how, when, and by whom patients would be made aware of the actor's belief that risk(s) of potential exposure of the patient to legal action could arise from a particular access, exchange, or use of EHI and provided an opportunity to explicitly request or direct that the sharing occur despite such risk(s) to the patient of potential exposure to (§ 171.206)(e)) legal action.

Comments. A few commenters asked ASTP/ONC to carefully consider the impact on a minor patient's ability to obtain reproductive health care if one or more of the alternate proposals were adopted as conditions to the Protecting Care Access Exception to prohibit actors from violating 45 CFR 164.524 with respect to individual access rights as a condition of the Protecting Care Access Exception. One commenter noted that section 164.524's requirements with respect to minor health information and personal representatives are exceedingly complex under section 164.524's access requirements and the legal standards in section 164.502(g) for personal representatives with respect to minor and parental access and control rights as they relate to underlying (and changing) state minor consent to treatment laws for reproductive health care. With this in mind, the commenter suggested that reasonable minds can differ regarding who should be treated as the ''individual'' under 45 CFR 164.524. Further, given the special considerations involved with reproductive health care, the commenter suggested a delay in imposing such a prohibition that could negatively affect minor patients and provider decisions relating to such care for minor patients.

Response. We thank the commenter for their feedback. Having considered all of the comments received, we have finalized the Protecting Care Access Exception as proposed. We have not attempted to infer what prohibition the commenter above may be referencing because any prohibition on sharing of EHI (of a minor or other person) would be beyond the scope of the Protecting Care Access Exception. All information blocking exceptions are voluntary. Moreover, as we noted in the HTI–2 Proposed Rule, even where an actor might choose to deny any given access, exchange, or use of EHI for permissible purposes consistent with an information blocking exception, the actor who is a HIPAA covered entity or business associate would still, separately, have to comply with the *45 CFR 164.524* individual right of access, and any actor would still have to comply with other valid, applicable law compelling the actor to make the EHI available for

[54] For purposes of the information blocking regulations, ''permissible purpose'' is defined in 45 CFR 171.102.

permissible purposes (*89 FR 63636*). Any changes to State or Tribal law that would affect if or when a non-emancipated minor can consent to or otherwise lawfully obtain any type of health care, including but not limited to reproductive health care, is beyond the scope of this final rule. Any changes or clarifications to which person(s) a HIPAA covered entity is required by 45 CFR 160.502(g) to recognize as the personal representative of an individual in what circumstances for purposes of 45 CFR 164.524, or how any paragraph of 45 CFR 164.524 applies to requests for access to an individual's PHI that may be made in any specific circumstances, is beyond the scope of this final rule. Any interpretation of such provisions of the HIPAA Privacy Rule is also outside the scope of this final rule because we did not adopt any of the HTI–2 Proposed Rule alternative proposals that would have limited the applicability of the Protecting Care Access Exception to actors' practices that fully complied with 45 CFR 164.524 in individual access scenarios to which 45 CFR 164.524 would also apply. For purposes of the Protecting Care Access Exception, an actor's practice that meets the § 171.206(a) *threshold* condition and at least one of the other conditions (§ 171.206(b) *patient protection* or § 171.206(c) *care access*) will satisfy the exception. We have finalized, as proposed, in § 171.206(b)(3) what ''patient'' means for purposes of § 171.206(b)(1) and (b)(2), including the § 171.206(b)(2) specification that to meet the condition an actor's practice must be subject to nullification by an explicit request or directive from the patient.

Comments. A commenter noted that a patient's ability to direct disclosure should be informed, and actors should not be penalized for seeking to ensure that patients have the relevant information available in considering whether to direct disclosure. The commenter generally supported the provisions of the HTI–2 Proposed Rule that permit actors to delay disclosure to provide honest information that is provided in a non-discriminatory manner and that is relevant to the actor's belief that a risk of potential exposure to legal action could be created by the action and general information about privacy laws or other relevant laws that the actor believes may be relevant. The commenter suggested that the actor's permission to share such information with patients fits more logically with the patient nullification rights and should be situated in that condition.

Response. We thank the commenter for their support. We believe this comment pertains to our second proposed alternative to include in the proposed *care access* condition (§ 171.206(c)) an additional requirement that would be applicable specifically if an actor chooses to engage in a practice of delaying fulfillment of requests for EHI access, exchange, or use by individuals (as defined in § 171.202(a)(2)) because the actor wants to provide, in a non-discriminatory manner, information to the individual relevant to the actor's good faith belief that a risk of potential exposure to legal action could be created by the individual's choice of how to receive their EHI or to whom the individual wishes to direct their EHI (*89 FR 63637*). We have finalized the Protecting Care Access Exception as proposed and have not finalized any of our proposed alternatives to include in the *care access* condition (§ 171.206(c)) or any other conditions. We may consider further refining the exception's conditions in future rulemaking based on experience in the field with the exception as finalized in this final rule or on changes in the legal landscape or market conditions.

Comment. One commenter appreciated the reference in the patient protection condition to EHI that shows or would carry a substantial risk of supporting an inference that the patient has health condition(s) or history for which reproductive health care is often sought, obtained, or medically indicated as well as the references to having obtained or inquired about or expressed an interest in receiving reproductive health care.

Response. We appreciate the comment. We believe that addressing actors' uncertainty specific to information blocking by finalizing the Protecting Care Access Exception will promote better patient satisfaction and health outcomes as well as continued development, public trust in, and effective nationwide use of health information technology infrastructure to improve health and care. We noted this belief in proposing this new exception (*89 FR 63630*). By addressing an information blocking actor's concern about potential exposure to legal action flowing from an access, exchange, or use of EHI related to reproductive health care, the exception addresses the risk that actors such as health care providers may be unable to provide care that will best meet the patient's needs (*89 FR 63631*), among other risks we describe in the HTI–2 preamble (*89 FR 63630*).

Comments. We received several comments requesting or recommending that we clarify or reaffirm what ''natural person'' means when used in defining ''individual'' or ''patient'' for purposes of the information blocking regulations. We received several comments asking that we clarify what ''patient'' means for purposes of this exception. We received one comment stating we should use the same ''patient'' as the HIPAA Privacy Rule. A couple of commenters noted that the definition of ''person'' under the information blocking regulations cross-referenced the definition of person in 45 CFR 160.103, indicated the clarification of ''natural person'' in that definition addressed their concerns about what that means and requested we provide an explanation so that it is clear to all actors.

Response. The term ''individual'' is not used in the text of the Protecting Care Access Exception (§ 171.206). However, references to ''individual'' in the preamble discussions of this exception in discussing the HIPAA Privacy Rule or individuals' privacy interests should be understood to mean what it means in 45 CFR parts 160 and 164. Where we are discussing the operation of the Privacy Exception, the term ''individual'' should be understood to have the meaning it is given, for purposes of the Privacy Exception, in § 171.202(a)(2). We refer readers to the section of this final rule preamble where we discuss what ''individual'' means in context of the Privacy Exception, § 171.202.

Second, the meaning of ''patient'' for purposes of the finalized Protecting Care Access Exception is specified in § 171.206(b)(3) and explained both in the HTI–2 Proposed Rule preamble and the summary of that proposal (above) in this final rule. It relies on the term ''natural person'' which, in context of the information blocking regulations, means ''a human being who is born alive.'' We did not propose changes to the definition of ''person'' in § 171.102, which cross-references the definition of ''person'' in 45 CFR 160.103.

d. Care Access Condition

We stated (89 FR 63636) that the proposed *care access* condition would apply as specified in paragraph (c) of § 171.206. We clarified that the condition could be met by practices an actor implements to reduce the risk of potential exposure to legal action for persons who provide reproductive health care or are otherwise involved in facilitating reproductive health care that is lawful under the circumstances in which it is provided. We stated (89 FR 63636) that such persons would include licensed health care professionals, other health care providers, and other persons

involved in facilitating care that is lawful under the circumstances in which it is provided. We stated (89 FR 63636) that such persons would include persons (friends, family, community caregivers, and others) who help patients find, get to the site of or home from, and afford care. We stated that for purposes of the *care access* condition in § 171.206(c) and § 171.206(b)(1)(i) (within the *patient protection* condition), the reproductive health care must be ''lawful under the circumstances in which it is provided'' as explained in the HTI–2 Proposed Rule (89 FR 63635).

To satisfy the *care access* condition in paragraph (c) of § 171.206, the practice must affect only access, exchange, or use of specific EHI (one or more data points) that the actor believes could potentially expose a care provider(s) or facilitator(s) to legal action because that EHI shows or would carry a substantial risk of supporting a reasonable inference that such person(s) are currently providing or facilitating, have provided or facilitated, or both, reproductive health care that is (or was) lawful under the circumstances in which it is (or was) provided.[55]

We proposed this requirement to make the exception inapplicable to other EHI that actors will often have that applicable law would also permit them to make available for permissible purposes. Such EHI to which these exceptions might not apply could include, we noted (89 FR 63637), information relevant to the safety, continuity, and quality of care, such as a patient's chronic condition(s) or a medically confirmed allergy to a substance that does not indicate or suggest reproductive health care has, or may have, occurred (and thus poses no risk of exposure to legal action as defined in § 171.206(e)). To the extent the actor has such other EHI that the actor can (both legally and technically) make available for any and all permissible purposes, we would expect the actor to do so. We recognized that in some circumstances the actor may need to make such other EHI available in an alternative manner rather than the manner requested by the requestor. (We used ''manner requested'' and ''alternative manner'' in a sense consistent with paragraphs (a) and (b), respectively, of the Manner Exception as currently codified in § 171.301.)

We proposed that when an actor's practice satisfies the *threshold* condition in § 171.206(a) and meets all the requirements of the *care access* condition in § 171.206(c), the actor's practice will not constitute information blocking. As with any of the existing exceptions, the Protecting Care Access Exception would not supersede or override any other valid Federal, State, or Tribal laws that compel production of EHI for purposes of legal proceedings or that compel other disclosures in relevant circumstances. Therefore, actors and other interested persons will want to remember that satisfying an exception set forth in 45 CFR part 171 does not prevent other law that operates independently from 45 CFR part 171 from potentially compelling an actor to provide access, exchange, or use of EHI in a manner or for purposes the actor, or an individual, might prefer the EHI not be accessed, exchanged, or used. As actors are likely already aware, conduct that is not considered ''information blocking'' under 45 CFR part 171, whether on the basis of satisfying an exception or on the basis of not meeting an element of the definition of ''information blocking'' in the information blocking statute (42 U.S.C. 300jj–52) may nevertheless violate, and may subject the actor to consequences authorized by, laws separate from and operating independently of the information blocking statute and 45 CFR part 171.

We stated that the *care access* condition would apply where the risk of potential exposure to legal action is specific to the mere fact that reproductive health care (that was lawful under the circumstances in which it was provided) was provided or facilitated. The *care access* condition would not be met where the risk of potential exposure to legal action is based on care having been provided in circumstances where the care was not lawful. (We refer readers again to our explanation, in the HTI–2 Proposed Rule (89 FR 63635), of how we would interpret ''lawful under the circumstances'' in which care was provided in context of the proposed § 171.206.)

We stated (89 FR 63637) the Protecting Care Access Exception would not apply to a practice that precludes the patient or an attorney representing the patient from obtaining access, exchange, or use of the patient's EHI for purposes of filing a benefit claim or a complaint against the actor with any agency of the U.S. Government. We explained that it would be unreasonable for an actor to withhold from a patient or a patient's attorney EHI that they need or seek to use in support of a claim for a benefit that is filed with any agency of the U.S. Government (89 FR 63637). We further explained that it would be unreasonable for the actor to attempt to withhold EHI access, exchange, or use to impede the patient or the patient's attorney filing, or the U.S. Government investigating, any complaint against the actor that the patient or the patient's attorney may file with any agency of the U.S. Government (89 FR 63637). Patients and their attorneys should have easy access to necessary information for considering, filing, or maintaining or pursuing such claims or complaints.

We noted (89 FR 63637) that an actor that is also required to comply with the HIPAA Privacy Rule must comply with the individual right of access as codified in 45 CFR 164.524 regardless of whether the actor may be able to satisfy any existing or proposed exceptions to the § 171.103 definition of ''information blocking.'' To ensure actors remain aware of this fact, we proposed as the first of several (non-exclusive) alternatives, to include in the *care access* condition (§ 171.206(c)) an additional explicit restriction of the condition to practices that do not violate 45 CFR 164.524. We stated that we might finalize this additional requirement even if we did not finalize any of the other additional requirements that we proposed to potentially apply to the Protecting Care Access Exception as a whole or to the proposed *patient protection* condition (§ 171.206(b)).

The first requirement we proposed in the alternative specific to the *care access* condition would provide for the *care access* condition (§ 171.206(c)) to be met by practices that could interfere with an individual's access to EHI only to the extent that the interference could otherwise implicate the ''information blocking'' definition in § 171.103 without also constituting non-compliance with 45 CFR 164.524 where 45 CFR 164.524 also applies. For example, under this first proposed potential added restriction on the applicability of § 171.206(c), a delay of

[55] We stated that the *patient protection* condition in § 171.206(b) would apply to practices implemented for the purpose of reducing the patient's risk of potential exposure to legal action (as ''legal action'' is defined in § 171.206(e)). The *care access* condition in § 171.206(c) would apply to practices an actor implements to reduce potential exposure to legal action based on the mere fact that reproductive health care occurred for persons, other than the person seeking or receiving care, who provide care or are otherwise involved in facilitating the provision or receipt of reproductive health care that is lawful under the circumstances in which it is provided. In some circumstances, an actor's practice might meet both the § 171.206(b) *patient protection* and § 171.206(c) *care access* conditions simultaneously. But each of these conditions could also apply in circumstances where the other does not. Thus, we noted that the proposed Protecting Care Access Exception is intended and designed to apply where either or both of the *patient protection* and *care access* conditions are met in complement to the § 171.206(a) *threshold* condition.

an individual's access, exchange, or use of EHI that would rise to the level of an ''interference'' for purposes of the ''information blocking'' definition in § 171.103 that satisfied all other requirements of § 171.206(a) and (c) would be covered by the § 171.206 exception only to the extent the delay of the individual's (or their personal representative's) access to EHI did not exceed the maximum time permitted, in the specific circumstances, for fulfillment of access to PHI under 45 CFR 164.524. (Coverage of an exception would be irrelevant for a delay not rising to the level of an ''interference'' because § 171.103 focuses on practices not required by law that are likely to ''interfere with'' access, exchange, or use of EHI.) This proposed restriction to practices not violating § 164.524 would also mean § 171.206 would apply where an actor's interference involved offering fewer manners of access, exchange, or use than would be feasible for the actor to support, but only to the extent that the actor's limiting the manners in which EHI is made available would not constitute a violation under 45 CFR 164.524. We welcomed comment on this first additional potential limitation on the applicability of the proposed exception.

We proposed as a second (again, non-exclusive) alternative to include in the proposed *care access* condition (§ 171.206(c)) an additional requirement that would be applicable specifically if an actor chooses to engage in a practice of delaying fulfillment of requests for EHI access, exchange, or use by individuals (as defined in § 171.202(a)(2)) because the actor wants to provide, in a non-discriminatory manner, information to the individual relevant to the actor's good faith belief that a risk of potential exposure to legal action could be created by the individual's choice of how to receive their EHI or to whom the individual wishes to direct their EHI. For example, we stated that an actor that is also a HIPAA covered entity would, under § 164.524, be required to fulfill an individual's request for access to PHI or to transmit to a third party an electronic copy of an individual's PHI in an EHR within the time period required under § 164.524. We noted (89 FR 63638) that where the § 171.206 exception would apply and the third party is not a covered entity or business associate, the actor may wish to first provide the individual with information (that is, to the best of the actor's knowledge and belief, accurate and factual) about the HIPAA Privacy, Security, and Breach Notification Rules and differences in their applicability to EHI when it is not held by a HIPAA covered entity or business associate in comparison to when it is. Similarly, we stated that an actor might wish to communicate such information to an individual before enabling access, exchange, or use of EHI for a health care provider that is not a HIPAA covered entity or business associate. The actor might, for example, be concerned that the individual may not have previously obtained or been provided basic information about how the applicability of the HIPAA Privacy Rule to information held by or for a provider that is not a HIPAA covered entity may differ from the rule's application to the same information when it is held by or for entities regulated under HIPAA. The actor may wish to provide the individual such information so that the individual would have a fair opportunity to consider the possible privacy risks. In such situations, the actor may be concerned about potential information blocking implications of the delay that is necessary to provide the individual with information. Or the actor may be concerned with the delay that results when an individual (or their personal representative) is considering the information before confirming they want the actor to proceed with enabling the application the individual (or their personal representative) has chosen to receive the EHI of which the individual is a subject. Specifically, the actor may be concerned these delays could rise to the level of an ''interference'' and, therefore, implicate the information blocking definition even if the time required is less than the maximum time permitted to fulfill PHI access under 45 CFR 164.524 in the relevant circumstances.

Therefore, we considered the second proposed additional requirement for § 171.206. We noted that this second potential additional requirement would apply where an actor's practice delays making EHI available upon individual request or directive in order to provide individuals with non-biased general information about relevant laws or about the actor's belief that is consistent with § 171.206(a)(1)(i), the delay must be of no longer duration than is reasonably necessary to provide to the individual two things:

(1) honest information that is provided in a non-discriminatory manner and that is relevant to the actor's belief that a risk of potential exposure to legal action could be created by the particular access, exchange, and use of what specific EHI, such as general information about privacy laws or other laws that the actor believes may be relevant; and

(2) a reasonable opportunity to consider the information and seek additional information from other sources if the individual would like, before the individual is asked to either confirm or revise any specifics of their request for access, exchange, or use of their EHI.

We stated that under this alternative proposal specific to delaying a response to a right of access request (including the right to direct a HIPAA covered entity to transmit to a third party an electronic copy of the individual's PHI in an EHR), delays longer than reasonably necessary to provide the individual with information relevant to the actor's belief that is consistent with § 171.206(a)(1) and allow the individual to consider the actor's information and seek information from additional source(s) (if the individual desires) would not satisfy the § 171.206(c) *care access* condition. We noted that this proposed restriction that is specific to delays for the purpose of informing individuals of an actor's belief that sharing specific EHI could create risk of potential exposure to legal action could be implemented regardless of whether we also implement a requirement that, for the *care access* condition or for the *threshold* condition to be met by an actor's practice, the practice must not constitute a violation of § 164.524. We also noted that this potential additional requirement would limit the applicability of the condition in scenarios where an actor might choose to engage in delay to provide individuals with information about potential privacy consideration but should not be construed as creating an affirmative requirement for any actor to delay fulfillment of individual access requests to provide individuals with information about potential privacy implications of the individual's request. We reiterated that information blocking exceptions are voluntary.

We reiterated that even in scenarios where an actor's denial of access, exchange, or use of EHI might not be ''information blocking'' because it satisfies an exception under and for purposes of part 171, an actor that is a HIPAA covered entity or business associate will still need to comply with 45 CFR 164.524 (individual right of access). (This was true of the exceptions codified in subparts B, C, and D of 45 CFR part 171 as of the date of publication of the HTI–2 Proposed Rule and would also be true of the new exceptions proposed in the HTI–2 Proposed Rule in the event any of them are finalized.)

We noted that the additional requirement(s) we considered would seek to further the exception's balance of the interests of actors and patients in protecting reproductive health care availability by mitigating legal risks for the people who provide that care, and for the people who facilitate the provision of such care, with the interests of individuals in being able to access, exchange, and use all of their EHI however and whenever they want, and to share all of their EHI however and with whomever they choose, at no cost for ''electronic access'' as defined in § 171.302(d). We sought comment on those alternative proposals (89 FR 63638).

Comments. Several commenters expressed support for the *care access* condition and recommended finalizing the condition as proposed. These commenters stated that the condition was appropriately structured and necessary to provide protections for all individuals who may be involved in providing or facilitating reproductive health care.

Response. We appreciate the comments on this condition. This condition is intended to ensure that the Protecting Care Access Exception will address actors' concerns about potentially implicating the information blocking definition from their consideration of whether they wish to engage in practices consistent with the exception's conditions in order to reduce potential exposure to legal action (as defined in § 171.206(e), as finalized) for individuals involved in providing or facilitating reproductive health care under circumstances in which such care is lawful. Having reviewed and considered all comments received on the proposed Protecting Care Access Exception, we have finalized the *care access* condition (§ 171.206(c)) as proposed.

Comments. A commenter asked that we indicate whether facilitating care included various people engaged in various activities that may make it possible or easier for a patient to seek or obtain care: friends, family members, or other persons helping the patient find and get to a location where reproductive health care is available or was obtained; accompanying a patient to obtain care; helping a patient return home or providing support to a patient recovering after obtaining lawful reproductive health care. One commenter asked whether persons with legal authority to make health care decisions on behalf of patients, and who consent to care on behalf of patients who cannot consent due to the patient's incapacity, are considered ''persons who facilitate access to'' reproductive health care for purposes of the Protecting Care Access exception.

Response. We reiterate that ''facilitating reproductive health care that is lawful under the circumstances in which such health care is provided'' (§ 171.206(c)) includes conduct that: facilitates a patient seeking or obtaining such care; facilitates a provider's provision of such care; or both. Each of the examples described in the paragraph immediately above would, therefore, be included. However, this is not an exhaustive catalog of all of the actions, activities, or ways in which a person might lawfully facilitate another's seeking, obtaining, or providing lawful reproductive health care. We do not believe it is necessary to catalog all of the various activities or scenarios in which persons other than those involved in providing health care make it easier or possible for patients to seek or obtain reproductive health care that is lawful under the circumstances in which it is furnished. Moreover, we decline to provide or discuss in detail any sampling of examples of conduct to which § 171.206(c) when a person is facilitating a patient's seeking or obtaining lawful reproductive health care to avoid creating a risk that such a discussion could be misconstrued as limiting the actions or activities (or scenarios within which such actions or activities) would, for purposes of paragraph (a)(1)(i) or paragraph (c) of § 171.206, qualify as facilitating reproductive health care.

Comments. One commenter, commenting on the alternative proposal specific to delaying a response to a right of access request, stated that the recognition of a potential delay in fulfilling EHI requests due to any protections afforded to information about reproductive health care is an important step in implementing information blocking and HIPAA privacy regulations. The commenter recommended finalizing this proposal as written. One commenter opposed the alternative proposals that would tie the Protecting Care Access Exception to the HIPAA right of access, stating that the proposals are unnecessary and citing HIPAA's enforcement processes. Another commenter noted that a patient's ability to direct disclosure should be informed and actors should be permitted to delay disclosure to provide in a non-discriminatory manner honest information that is relevant to the actor's belief that a risk of potential exposure to legal action could be created by the particular access, exchange, or use of EHI. This comment described the alternative proposal in terms of permission to share information with patients and suggested this would fit more logically with the patient nullification provision.

Response. We appreciate the comments on the alternative proposal specific to individual right of access requests for access, exchange, or use of EHI. Having reviewed and considered all comments received on the Protecting Care Access Exception, we have decided not to adopt this alternative proposal. We have finalized the *care access* condition (§ 171.206(c)) as proposed (89 FR 63804).

In light of comments asking for guidance on this and other provisions within the information blocking regulations (45 CFR part 171), it may be helpful to clarify that the Protecting Care Access Exception (§ 171.206), as proposed and as finalized, applies under its codified conditions to a wide variety of practices likely to interfere with access, exchange, or use of EHI. Such practices would include, but are not limited to, an actor delaying fulfillment of a patient's request for access to their own EHI or to direct their EHI to a third party for the time needed to provide to the patient, in a non-discriminatory manner, honest information that is relevant to the actor's belief that a risk of potential exposure to legal action could be created by a particular access, exchange, or use of EHI the patient has requested, directed, or authorized. While it might be ideal for an actor to have communicated such information to a patient in advance of the patient directing or authorizing any specific access, exchange, or use of EHI, we recognize that this may not always be feasible. Therefore, the actor may need some time upon receipt of request to convey information relevant to a belief that the actor holds in good faith at that time. In this regard, we want to make clear that similar to our guidance in the ONC Cures Act Final Rule (85 FR 25642), it would not be an interference to provide a patient with information that is relevant to the actor's belief that a risk of potential exposure to legal action could be created by a particular access, exchange, or use of EHI the patient has requested, directed, or authorized. However, as we described such an approach in the alternative proposal and here, the information provided must be: (1) relevant to the actor's belief that a risk of potential exposure to legal action could be created by a particular access, exchange, or use of EHI the patient has requested, directed, or authorized; (2) honest (unbiased and based on a good faith

belief); and (3) in a nondiscriminatory manner (treat all patients the same).

We remind actors that, although we have not adopted the alternative proposal to limit the Protecting Care Access Exception's coverage of delays to individual access to such delays that are shorter than the maximum timeframes allowed under 45 CFR 164.524, all actors who are also HIPAA covered entities or business associates remain responsible for complying with the HIPAA Privacy Rule. We reiterate that ASTP/ONC partners closely with OCR to maintain alignment across the regulations issued pursuant to both HIPAA and the information blocking statute (PHSA section 3022), and also that these are *separate* regulations issued under independent statutory authorities. An actor that is also required to comply with the HIPAA Privacy Rule must comply with the individual right of access as codified in 45 CFR 164.524 regardless of whether the actor may be able to satisfy *any* exception(s) to the § 171.103 definition of ''information blocking'' with respect to some or all of the PHI they may have for any given individual (as both ''protected health information'' and ''individual'' are defined in 45 CFR 160.103).

e. Presumption Provision and Definition of ''Legal Action''

i. Presumption Provision

For purposes of determining whether an actor's practice meets § 171.206(b)(1)(i) or § 171.206(c), we proposed (89 FR 63638) in § 171.206(d) to state that care furnished by someone other than the actor would be presumed to be lawful unless the actor has actual knowledge that the care was not lawful under the circumstances in which it was provided. This presumption proposed in § 171.206(d) is similar to the presumption in 45 CFR 164.502(a)(5)(iii)(C) of the 2024 HIPAA Privacy Rule, but is necessarily different because of differences in how the prohibition at 45 CFR 164.502(a)(5)(iii)(A) operates and how the Protecting Care Access Exception (§ 171.206) is intended to operate.

First, the Protecting Care Access Exception (§ 171.206) was proposed to be voluntary (89 FR 63638). As proposed and as finalized, it is designed and intended to offer certainty that practices that meet the exception's conditions will not be considered ''information blocking.'' Nothing in § 171.206, as proposed or as finalized, is intended to create an affirmative obligation for any actor to evaluate whether the Protecting Care Access Exception might apply to any access, exchange, or use of EHI for permissible purposes.

Second, the Protecting Care Access Exception (§ 171.206) was proposed based on statutory authority found in section 3022 of the PHSA to identify reasonable and necessary activities that do not constitute information blocking for purposes of the PHSA section 3022 definition of the term (89 FR 63638). We did not propose that anything in § 171.206 would operate to override an actor's obligation to comply with another (applicable) law that requires the actor to make EHI available for any permissible purpose (89 FR 63638 and 63639). Thus, we noted (89 FR 63639), an actor may still be compelled to disclose EHI in compliance with such other law even where the exception might mean an actor's failure to comply with such other law would not be considered ''information blocking'' under 45 CFR part 171 or PHSA section 3022. (We noted at 89 FR 63639 that the exception would not be relevant where an actor is also a HIPAA covered entity or business associate that would be required to comply with the prohibition at 45 CFR 164.502(a)(5)(iii) because a HIPAA covered entity's or business associate's practice of refusing to make a use or disclosure of PHI prohibited by the HIPAA Privacy Rule is ''required by law'' and therefore not information blocking to begin with.)

Finally, we stated (at 89 FR 63639) that a policy goal of the Protecting Care Access Exception is that it be easy for any actor to confidently and efficiently meet the conditions of the proposed exception. One way the exception's proposed structure supports this goal is by providing (in § 171.206(a)(3)(i)) for the actor to implement practices per organizational policies that address particular types of EHI sharing scenarios where the actor believes the risk of potential exposure to legal action could be created even if the actor has not yet received a request for EHI for the activities specified in 45 CFR 164.502(a)(5)(iii)(A) or any of the purposes specified in 45 CFR 164.512(d), (e), (f), or (g)(1) for which the attestations specified in 45 CFR 164.509 would be required as a precondition for disclosing PHI potentially related to reproductive health care to be permitted under the 2024 HIPAA Privacy Rule (89 FR 63639).

We stated that, as noted elsewhere, an actor's practice satisfying the new Protecting Care Access Exception would mean the practice will not be considered information blocking (89 FR 63639). To the extent that EHI indicates or potentially relates to reproductive health care that was not lawful under the specific circumstances in which it was provided, we presume that the legal authority compelling disclosure of EHI for such purposes would have its own enforcement provisions independent of the penalties and disincentives authorized by PHSA section 3022 for an actor determined by the HHS OIG to have committed information blocking. As we noted in proposing the new § 171.206 Protecting Care Access Exception (89 FR 63639), because the exception would not exempt the actor from their obligation to comply with such other law, we do not believe it is necessary to preserve the potential for information blocking penalties to apply in addition to any consequences that might attach under such other law to an actor's non-compliance with that law. On the other hand, we stated that we believe it is important to ensure that concerns about information blocking consequences would not prevent the actor from, for example, delaying fulfillment of a demand for EHI in order to review factual information supplied by the requestor and determine whether that information ''demonstrates a substantial factual basis'' (as stated in 45 CFR 164.502(a)(5)(iii)(C)(2)) and, by extension, whether the 2024 HIPAA Privacy Rule or applicable state law permits, preempts, or conflicts with the law the requestor indicates compels the actor to make the EHI available to the requestor (89 FR 63639).[56]

The proposed § 171.206(d) presumption provision was *not* tied to a requestor not supplying information demonstrating a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided (89 FR 63639). Doing so might have made the proposed Protecting Care Access Exception (§ 171.206) more difficult for actors to use and therefore discourage actors from using it (89 FR 63639). We noted in proposing the provision our concern that this difficulty could discourage use of the exception particularly by those actors—such as small and safety net health care

[56] We remind readers that the currently codified ''pre-condition not satisfied'' sub-exception of the Privacy Exception outlines a framework for actors to follow so that the actors' practices of not fulfilling requests to access, exchange, or use EHI would not constitute information blocking when one or more preconditions has not been satisfied for the access, exchange, or use to be permitted under applicable Federal and State or Tribal laws. Please *see* § 171.202(b) and discussion in HTI–1 Final Rule (at 89 FR 1351 through 1354) of how information blocking exceptions work in concert with the HIPAA Rules and other privacy laws to support health information privacy.

providers or non-profit health information networks who serve them—who may have limited ability to divert resources to these types of legal analyses (89 FR 63639). For example, this might arise in circumstances where the exception is intended to apply but the request for EHI access, exchange, or use may not be coming from a law enforcement entity and the access, exchange, or use of EHI sought may be for a purpose other than law enforcement (89 FR 63639).

At 89 FR 63639, we proposed in the alternative to add to § 171.206(d), if finalized, a provision that parallels the provision in 45 CFR 164.502(a)(5)(iii)(C)(2) and that would prevent the § 171.206(d) presumption from applying where factual information supplied by the person requesting access, exchange, or use of EHI demonstrates a substantial factual basis that the reproductive health care was not lawful under the specific circumstances in which it was provided. We welcomed comments on this alternative proposal.

Comments. A few comments stated that ASTP/ONC should adopt the § 171.206(d) presumption provision as proposed. One commenter stated that ASTP/ONC did not need to adopt the alternative provision to parallel the HIPAA Privacy Rule because the proposed exception is voluntary, and the information blocking rules do not preempt state law. This commenter stated that including the factual basis provision would unnecessarily preclude actors from protecting health information.

Response. We appreciate the comments on the proposed presumption provision. Having reviewed and considered all comments received on the proposed Protecting Care Access Exception, and for the reasons explained above, we have not adopted the alternative proposal to parallel the provision in 45 CFR 164.502(a)(5)(iii)(C)(2). We have finalized the § 171.206(d) presumption provision as proposed (89 FR 63804).

Comment. One comment stated that applying a clear and convincing evidence standard across the board to the Protecting Care Access exception's *threshold* condition, *patient protection* condition, and *care access* condition would be preferable to the alternative we proposed to 171.206(d) noting that the clear and convincing standard is a well-established legal standard.

Response. We did not present or solicit comment on such an alternative in the HTI–2 Proposed Rule. We have finalized 171.206(d) as proposed (89 FR 63804). As we noted in the HTI–2 Proposed Rule, we believe it would be more difficult for actors to use the Protecting Care Access Exception (§ 171.206) if the presumption only applied if the requestor supplied the information demonstrating a substantial factual basis that the reproductive health care was not lawful under the specific circumstances. We believe requiring clear and convincing evidence that care the actor did not provide was unlawful would severely limit the presumption's ability to support efficient application of the exception. Although clear and convincing evidence is a well-established legal standard, it is unclear whether small actors with limited resources, such as small and safety net health care providers, would be able to apply the type of legal analysis that would be required for them to accurately meet the Protecting Care Access Exception's conditions if it used a clear and convincing evidence standard.

Comments. One comment stated that it should not be presumed whether an abortion is lawful in any particular circumstance. This comment stated that this type of information may be sought in criminal, civil, and administrative investigations in order to determine whether the procedure was lawful. One commenter asked ASTP/ONC to clarify, potentially in conjunction with OCR, that ''lawfulness'' for purposes of the proposed exception should be assessed in the jurisdiction where the provider is located.

Response. The § 171.206(d) presumption provision applies ''for purposes of determining whether an actor's practice meets paragraph (b)(1)(i) or (c) of'' § 171.206. We remind actors and other readers that, as we noted in the HTI–2 Proposed Rule (89 FR 63639), to the extent that EHI indicates or potentially relates to reproductive health care that was not lawful under the specific circumstances in which it was provided, we presume that the legal authority compelling disclosure of EHI for such purposes would have its own enforcement provisions independent of the penalties and disincentives authorized by PHSA section 3022 for an actor determined by the HHS OIG to have committed information blocking. We emphasize that the exception would not override an actor's obligation to comply with a mandate contained in law that requires disclosures that are enforceable in a court of law, as we noted in proposing the exception (89 FR 63632).

Comment. One comment asked that ASTP/ONC remove the presumption of lawfulness to allow for a broader interpretation of the rule's language. This commenter stated that lawfulness of care should not be a priority for providers whose jobs are to ensure access to health care and also noted the difficulty for patients and providers to track what and where health care may be ''lawful.''

Response. We appreciate the opportunity to clarify that the § 171.206(d) *presumption* provision is designed to enable any § 171.102 actor (including any health care provider) to confidently use the exception when they did not provide the reproductive health care indicated in the EHI, or (where the *patient protection* condition applies) may not be certain what care, or whether care, may have occurred for any health condition(s) or history for which reproductive health care is often sought, obtained, or medically indicated. Where the care in question was not provided by the actor, the presumption ensures that actors need not interrogate patients, or investigate patients' EHI received from other actors, to compare available details of the patient's health and care against the often complex and nuanced details of applicable laws just because the actor wants to engage in a practice likely to interfere with access, exchange, or use of EHI with confidence that (under the conditions of the Protecting Care Access Exception) the practice will not constitute ''information blocking.'' Similarly, the presumption ensures that an actor can confidently use the Protecting Care Access Exception without tracking laws under which they do not operate but under which a patient may have received care from someone other than the actor.

We also reiterate that all information blocking exceptions are voluntary. The Protecting Care Access Exception does not create an affirmative obligation under the information blocking regulations for any actor to engage in any practice the exception would cover.

ii. Definition of ''legal action''

We proposed in § 171.206(e) (89 FR 63804) to define ''legal action'' for purposes of the Protecting Care Access Exception to include any of the following when initiated or pursued against any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care: (1) civil, criminal, or administrative investigation; (2) a civil or criminal action brought in a court to impose criminal, civil, or administrative liability; or (3) an administrative action or proceeding against any person (89 FR 63639). We emphasized that the proposed Protecting Care Access Exception would apply where an actor's

practice meets the § 171.206(a) *threshold* condition and at least one of the other two conditions in the exception, none of which would require the actor to quantify a degree, amount, or probability of the risk of potential exposure to legal action the actor believes in good faith exists and could be reduced by the practice to which § 171.206 applies (89 FR 63639).

Comments. Several commenters expressed support for our proposed definition of ''legal action'' and noted that it covered expected concerns and risks.

Response. We appreciate the comments. We proposed the definition of ''legal action'' for purposes of § 171.206 to include a broad array of criminal, civil, and administrative investigations, actions, and proceedings as specified in the proposed § 171.206(e)(1)—(3) (89 FR 63633). Having considered all comments received in response to the proposed exception, we have finalized the ''legal action'' definition in § 171.206(e) as proposed (89 FR 63804).

Comment. One commenter supported the definition of ''legal action'' but asked that it be expanded to be parallel to HIPAA which covers uses of protected health information to identify any person for certain investigations or proceedings, noting that mere efforts to identify individuals, shy of a formal investigation or proceeding, can chill health care access and patient trust to the same degree as formal investigations and proceedings.

Response. We appreciate the comment. We did not present an expansion of the definition of ''legal action'' as an alternative proposal or solicit comment on such an alternative. We believe that because the Protecting Care Access Exception (§ 171.206) as proposed and finalized functions differently from 45 CFR 164.502(a)(5)(iii), the exception as a whole is sufficiently broad. Specifically, § 171.206 is not limited to uses or disclosures of EHI for specific purposes but instead relies on a good faith belief consistent with § 171.206(a)(1)(i) that specific practices likely to interfere with applicable access, exchange, or use of specific EHI could reduce that risk. Such practices could include an actor not sharing relevant EHI with entities, such as entities not regulated under the HIPAA Privacy Rule, that are known or suspected of making EHI available to data brokers or whom the actor believes in good faith would otherwise potentially expose the EHI to identification activities that could lead to a ''legal action'' as defined in § 171.206(e).

Comments. One commenter stated that the language on protection against potential legal action is vague and potentially overly broad, noting that under the proposed language, custody disputes could be considered legal action. The commenter stated that this could create unnecessary legal liability and a burden on stakeholders.

Response. The § 171.206(e) ''legal action'' definition establishes what the term ''legal action'' means when used in the § 171.206(a) *threshold* condition, the § 171.206(b) *patient protection* condition, and the § 171.206(c) *care access* condition. The definition is intended to encompass a broad array of criminal, civil, and administrative investigations, actions, and proceedings, but only if those investigations, actions, and proceedings are based on the mere fact that a person sought, obtained, provided, or facilitated reproductive health care.

The Protecting Care Access Exception, like all information blocking exceptions, is voluntary. It is not intended to create an affirmative obligation for an actor to evaluate whether a risk of potentially exposing anyone to legal action from any particular EHI access, exchange, or use scenario(s) might occur. It is also not intended to override an actor's obligation to comply with other valid, applicable law compelling the actor to make the EHI available for permissible purposes.[57] An example of this that we used in the HTI–2 Proposed Rule was that an actor would still need to comply with applicable legal discovery rules and judicial orders issued by a court of competent jurisdiction. Non-compliance with such other laws could subject the actor to sanctions under those other laws regardless of whether the actor's practice would also be considered information blocking or would instead be covered by an exception set forth in any subpart of *45 CFR part 171.* We therefore do not expect the definition of ''legal action'' in § 171.206(e), or this exception as a whole, to affect the ability of a party to a custody dispute to obtain relevant evidence in the normal course of that legal proceeding.

Comments. A few commenters sought application of the exception to any instance in which the fact of seeking or obtaining reproductive health care increases the risk of legal action, stating that some jurisdictions undermine care access by using the fact that a person obtained or sought reproductive health care as evidence of other crimes (*e.g.,* substance use during pregnancy).

Response. The exception was proposed to address actors' concerns about potential information blocking implications of their limiting EHI sharing when they believe such interference with sharing could reduce a risk of legal action based on the mere fact that any person sought, obtained, provided, or facilitated reproductive health care or (where the *patient protection* condition applies) may have sought or needed reproductive health care. We do not believe explicit expansion of the exception to include legal action(s) based on conduct of a pregnant person *other than* the mere act of seeking, obtaining, providing, or facilitating reproductive health care would have the effect of ensuring that health care providers are not compelled to disclose information for use in such actions. This is because, as we have repeatedly reminded actors throughout this final rule, the exception is not intended to override other laws with which the actor must comply. Such an expansion is also beyond the scope of our proposal for this exception, including all of the alternatives on which we solicited comments in the HTI–2 Proposed Rule.

IV. Severability

As we explained in the HTI–2 Proposed Rule (89 FR 63511), it was and continues to be our intent that if any provision of the proposed rule were, if or when finalized, held to be invalid or unenforceable—facially or as applied to any person, plaintiff, or circumstance—or stayed pending further judicial or agency action, such provision shall be severable from other provisions finalized, and from rules and regulations otherwise in effect, and not affect the remainder of provisions finalized. It was and continues to be our intent that, unless such provision shall be held to be utterly invalid or unenforceable, it be construed to give the provision maximum effect permitted by law including in the application of the provision to other persons not similarly situated or to other, dissimilar circumstances from those where the provision may be held to be invalid or unenforceable.

This final rule finalizes provisions that are intended to and will operate independently of each other and of provisions finalized in previous rules, even if multiple of them may serve the same or similar general purpose(s) or policy goal(s). Where a provision is necessarily dependent on another, the context generally makes that clear (such as by cross-reference to a particular standard, requirement, condition, or pre-requisite, or other regulatory

[57] For purposes of the information blocking regulations, ''permissible purpose'' is defined in 45 CFR 171.102.

provision). Where a provision that is dependent on one that is stayed or held invalid or unenforceable (as described in the preceding paragraph) is included in a subparagraph, paragraph, or section within 45 CFR part 171, we intend that other provisions of such subparagraph(s), paragraph(s), or section(s) that operate independently of said provision would remain in effect.

For example, if an information blocking exception, sub-exception, or condition of any 45 CFR part 171 exception were stayed or held invalid or unenforceable, the other information blocking exceptions, sub-exceptions, or conditions to an exception would continue to be available for actors. For instance, an actor's practice meets the § 171.202 Privacy Exception by satisfying all the requirements of at least one of multiple sub-exceptions (paragraph (b), (c), (d), or (e)) that are not dependent on one another. If any one of the sub-exceptions were stayed or held invalid or unenforceable, the other sub-exceptions would remain available. When an actor's practice can meet an exception by satisfying all the requirements of a combination of conditions that includes any condition picked from an array of multiple conditions that are not dependent on one another, the exception would remain available and continue to apply to any practice meeting any of the remaining conditions. The Infeasibility Exception (§ 171.204) is an example of an exception that can be satisfied by meeting one always-required condition (§ 171.204(b) *responding to requests*) plus any one of the independent conditions in § 171.204(a). It is our intent that even if one of the conditions in § 171.204(a) were stayed or held to be utterly invalid or unenforceable, the § 171.204 Infeasibility Exception would remain available, and all of the other conditions in § 171.204(a) would remain in force and available to actors.

The Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)) is an example of a paragraph within part 171 that includes provisions dependent on provisions in another section or paragraph. Specifically, § 171.204(a)(2) *segmentation* condition includes provisions that are applicable where an actor has chosen to withhold some EHI consistent with any of §§ 171.201, 171.202, or 171.206. These specific provisions are, therefore, dependent on the cross-referenced sections, while other provisions in § 171.204(a)(2) are not. It is our intent that if any provision in any paragraph in § 171.201 or § 171.202 or § 171.206 were held to be invalid or unenforceable—facially or as applied to any person, plaintiff, or circumstance—or stayed pending further judicial or agency action, *only* the operation of the specific provision of § 171.204(a)(2) that specifically references such other section would be affected. All other provisions in § 171.204(a)(2) would remain in effect, including cross-references to other sections in 45 CFR part 171 *and* the § 171.204(a)(i) provision for EHI that other applicable law does not permit to be made available. For example, as noted in this rule's preamble discussion of the Protecting Care Access Exception (§ 171.206), it is our intent that if any provision of § 171.206, as finalized in this final rule, were held to be invalid or unenforceable facially, or as applied to any person, plaintiff, or stayed pending further judicial or agency action, such provision shall be severable from other provisions of § 171.206 that do not rely upon it and from any other provision codified in 45 CFR part 171 that does not explicitly rely upon § 171.206, even if such provisions were to be established or modified through this same final rule.[58] Thus, if § 171.206 were held to be utterly invalid, unenforceable, or stayed, it is our intent that the provisions in § 171.204(a)(2) that reference and rely on §§ 171.201 and 171.202 rather than § 171.206 should be construed as fully severable from the reference to § 171.206 and retain their full applicability and effect.

Moreover, we reiterate that it is our intent that unless any provision in any section or paragraph in 45 CFR part 171 shall be held to be utterly invalid or unenforceable, it be construed to give the provision maximum effect permitted by law including in the application of the provision to other persons not similarly situated or to other, dissimilar circumstances from those where the provision may be held to be invalid or unenforceable. For example, if the Protecting Care Access Exception (§ 171.206) were held to be invalid and unenforceable with respect to its application to a specific item or service that fits the § 171.102 definition of reproductive health care, it should be upheld with respect to other items and services that also fit this definition. Similarly, if either the § 171.206(b) *patient protection* condition or § 171.206(c) *care access* condition were held to be invalid as applied to specific reproductive health care item(s) or service(s) with respect to particular person(s) or in particular circumstance(s), that condition should be upheld with respect to the seeking, obtaining, provision, or facilitation of such item(s) or service(s) by other persons not similarly situated or in other, dissimilar, circumstances.

Even if a paragraph or subparagraph were held to be utterly invalid or unenforceable, it is our intent that the remaining subparagraphs or paragraphs even within the same section of the CFR would remain in effect and be construed to have the maximum effect permitted by law. For example, an actor's practice can satisfy the Protecting Care Access Exception (§ 171.206) by satisfying the *threshold* condition (§ 171.206(a)) and the requirements of at least one of the *patient protection* (§ 171.206(b)) or *care access* (§ 171.206(c)) conditions. If only the *patient protection* condition (paragraph (b)) of the Protecting Care Access Exception (§ 171.206) were held to be utterly invalid or unenforceable as applied to any person or situation, it is our intent that the provision in § 171.204(a)(2)(ii) that references EHI an actor may withhold consistent with § 171.206 be construed to give § 171.204(a)(2)(ii) maximum effect permitted by law where an actor has chosen to withhold EHI consistent with the § 171.206(a) *threshold* condition and § 171.206(c) *care access* condition.

To ensure our intent for severability of provisions is clear in the CFR, we proposed (as explained at 89 FR 63511) the addition to § 170.101 (89 FR 63766), § 171.101 (89 FR 63802), and inclusion in § 172.101 (89 FR 63805), of a paragraph stating our intent that if any provision is held to be invalid or unenforceable it shall be construed to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which case the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. These proposals are not addressed in this final rule but are among the subjects of the HTI–2 final rule (RIN 0955–AA07), which was recently issued.

V. Waiver of Delay in Effective Date

Under the Administrative Procedure Act (APA) (Pub. L. 79–404, Jun. 11, 1946), 5 U.S.C. 553(d) mandates a 30-day delay in effective date after issuance or publication of a rule. Such a delay is not required, however, for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). Moreover, section 553(d)(3) allows that an agency may waive the 30-day delay

[58] The reference to § 171.206 in § 171.204(a)(2) is currently the only example of a provision in any section of 45 part 171 that relies on § 171.206 in any way.

in effective date ''for good cause found and published with the rule.'' *Id.* 553(d)(3).

A delay in the effective date of the finalized provisions of this final rule is not required because this rule recognizes an exemption or relieves a restriction from the information blocking requirements that would otherwise exist in the absence of this final rule. Actors are not under any obligation to alter practices because of this final rule, as the information blocking exceptions generally, and the specific regulations finalized here, are voluntary. In addition, to the extent that a waiver of the delay in effective date would be required, there is good cause to waive the delay in the effective date for this final rule.

Because information blocking exceptions are voluntary, the expansion of the scope of provisions in § 171.202 and § 171.204, as well as the adoption of § 171.206, as finalized in this rule, do not create an obligation for any actor to begin engaging in practices to which the exceptions would apply if the actor does not want to or, if they do want to, on any particular timeframe. Therefore, because these provisions are all voluntary, we do not believe affected persons require additional time to prepare for the effective date of this final rule, to include the 30 days required by 5 U.S.C. 553(d). An actor who does need additional time could simply continue their current practices and would not be acting in contradiction to this rule. Additionally, because an actor conforming their practices to the exceptions, including those finalized in this rule, exempts those practices from the possible consequences of information blocking, this rule satisfies the requirement for an exemption from the effective date delay requirement under 5 U.S.C. 553(d)(1) (a delayed effective date after publication is not required for ''a substantive rule which grants or recognizes an exemption or relieves a restriction''). This final rule exempts an actor's conforming practices from the consequences of information blocking enforcement and does not apply or require any change in practice except to the extent that an actor wishes to undertake a practice conforming to the exceptions, thereby ensuring the actor's exemption from civil monetary penalties or appropriate disincentives.

As we have repeatedly reminded actors, an actor's practice that does not meet the conditions of an exception does not automatically constitute information blocking, as the practice must still meet all the elements of the information blocking definition to be considered information blocking, including that the practice is likely to interfere with the access, exchange, or use of EHI, and that the actor acted with the requisite intent (89 FR 1378 citing 85 FR 25820). Information blocking exceptions are also voluntary; we do not intend that the existence of any exception be construed as creating a mandate for actors to engage in a practice to which the exception would apply. However, information blocking exceptions offer actors certainty that if they choose to engage in certain practices that meet the conditions of applicable exception(s), then they will not be subject to a civil monetary penalty or appropriate disincentive from HHS. Thus, an immediate effective date for the new and revised exceptions will not require any actor to take immediate action, and therefore actors do not require additional time to prepare for the effective date of this final rule.

In addition, an immediate effective date will allow actors to immediately avail themselves of the revised and new exceptions finalized in this rule upon publication of the final rule, alleviating burdens associated with the uncertainty specific to information blocking implications that the provisions finalized in this rule are designed to address. For example, actors, such as health care providers, who withhold EHI related to reproductive health care consistent with the Protecting Care Access Exception will not be subject to civil monetary penalties or appropriate disincentives under the information blocking regulations as of the date of publication of this final rule for engaging in that practice. Thus, an immediate effective date for the Protecting Care Access Exception will remove from health care providers and the other actors on whom they rely for health IT items and services the burden of weighing, for another 30 days, their uncertainty about information blocking civil monetary penalties or appropriate disincentives for withholding patients' reproductive health care information in applicable circumstances against their belief that sharing the information in those circumstances risks potentially exposing persons to legal action as defined in § 171.206. Regardless of whether we expect, intend, or believe it is likely that HHS would seek to impose a civil monetary penalty or appropriate disincentive on any actor specifically for engaging in conduct to which § 171.206 applies, or within the expanded scope of provisions in § 171.202 or § 171.204 revised by this rule, during a 30 day period of delay between publication and effective date of this rule, our interactions with actors since the ONC Cures Act Final Rule (85 FR 25642) appeared in the **Federal Register** leads us to expect a majority of actors would be concerned that such enforcement activity would be possible and that some significant portion of them would continue to be burdened by that concern.

In further support of waiving the delayed effective date, the public has also expressed a need to avoid delays in implementing the proposed new Protecting Care Access Exception. As discussed at the end of the Background and Purpose section of ''III. Information Blocking Enhancements; *B. Exceptions;* 3. New Protecting Care Access Exception,'' commenters on the HTI–2 Proposed Rule specifically stated that the information blocking provisions finalized in this final rule should be effective without procedural delay, noting that such an approach would encourage continued use of electronic methods for sharing health information and ensure that some providers would not feel a need to revert to paper records to protect patients' privacy.

Because a disclosure—including one that is only permitted (not required) by other applicable law—is a bell that cannot be unrung, we believe it is important to mitigate the risk of actors' fear of being subject to civil monetary penalties or appropriate disincentives under the information blocking regulations from being the sole reason that they refuse to grant individuals' requests that their EHI not be shared or make individuals' reproductive health care information available for an access, exchange, or use that the actor believes in good faith could potentially expose the patient, provider, or facilitator of lawful reproductive health care to legal action (as defined in § 171.206). We are concerned that providers' uncertainties about their ability to track all laws that might be applied to them may be contributing to what some commenters on the proposed revision to § 171.204(a)(2) described as underuse of the Privacy Exception related to limited segmentation capabilities. An immediate effective date for the Protecting Care Access Exception and the revised Privacy sub-exception for individuals' requested restrictions, and the clarified and expanded *segmentation* condition of the Infeasibility Exception (§ 171.204(a)(2)), would afford all actors the assurance they need to immediately stop erring on the side of sharing individuals' EHI contrary to the individual's request or in situations where § 171.206 would apply. However many disclosures actors might make during a 30-day delay in the

effective date of this rule specifically and solely because of actors' fears of being subject to civil monetary penalties or appropriate disincentives as ''information blockers'' represent a compromise of patients' privacy and a commensurate, avoidable impediment to restoring patients' trust that their health care provider will be able to maintain their confidence unless another law that applies to the provider compels disclosure of patients' private health information against the provider's and patient's wishes.

Because, as we have explained, actors do not require additional time to prepare for the effective date of this final rule due to the voluntary nature of the information blocking exceptions we have revised and the exception we have finalized, we believe we have satisfied the requirements in 5 U.S.C. 553(d) needed to waive the delay in the effective date of the final rule. Avoiding a delay in effective date of this final rule could also help to more quickly render unnecessary concerned actors' efforts to seek state or local enactments aimed solely at addressing actors' concerns about implicating the information blocking regulations if they do not share reproductive health care information as widely as applicable laws might permit. Thus, an immediate effective date of this rule would enable actors to set aside the burden of these efforts and refocus on other goals, such as developing or implementing improved data segmentation capabilities or other health IT or patient care advancements.

VI. Regulatory Impact Analysis

A. Statement of Need

This final rule is necessary to meet our statutory responsibility under the Cures Act and to advance HHS policy goals to promote information sharing. As discussed in this final rule, the revised Privacy sub-exception ''individual's request not to share EHI'' (45 CFR 171.202(e)) and new Protecting Care Access Exception (45 CFR 171.206) respond to actors' uncertainty about potentially being subject to civil monetary penalties or appropriate disincentives under the information blocking regulations (45 CFR part 171) if they engage in practices intended to protect patients' privacy, providers' willingness to furnish care that is lawful under the circumstances in which it is furnished, and patients' trust in their providers and the nation's health information infrastructure. The revision to the Infeasibility Exception's *segmentation* condition (§ 171.204(a)(2)) finalized in this rule recognizes the current variability in, and in many cases lack of, technical capability an actor may have to segment EHI that an actor might wish to withhold under the Protecting Care Access Exception, or on ''unreviewable grounds'' for denial of individual access under the HIPAA Privacy Rule, from other EHI that the actor could share under applicable law. Thus, revising § 171.204(a)(2) is not only necessary to fully implement § 171.206 but also to ensure actors do not feel compelled—specifically by the information blocking regulations in combination with their inability to unambiguously segment relevant EHI—to disclose EHI in circumstances where the actor might otherwise (and a HIPAA covered entity would be permitted to) to deny an individual access to their health information. Such circumstances are identified in 45 CFR 164.524(a)(2) and include those where an inmate obtaining their health information would jeopardize the health, safety, security, custody, or rehabilitation of that inmate or others, or the safety of officers or other persons at the correctional institution or involved in transporting the inmate. The revisions to the Infeasibility Exception's *segmentation* condition broadens its scope of applicability without creating a need for any actor who may already be engaged in practices that were already in conformance to with the original scope of § 171.204(a)(2) to change any of their policies, procedures, or processes in order for such practices to remain in conformance with § 171.204(a)(2) as revised.

B. Alternatives Considered

In the HTI–2 Proposed Rule, we noted that we were unable to identify alternatives to our proposals that would appropriately implement our responsibilities under the Cures Act (89 FR 63662). We concluded that our proposals took the necessary steps to fulfill the mandates specified in the Public Health Service Act (PHSA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) and the Cures Act, in the least burdensome way. We welcomed comments on our assessment and any alternatives we should have considered.

Comments. We received comments suggesting alternatives to our proposals. Specifically, some commenters suggested that ASTP/ONC require health IT developers of certified health IT enable a user to implement a process to restrict uses or disclosures of data in response to a patient request when such restriction is necessary, citing 88 FR 23822. Another commenter encouraged ASTP/ONC to strengthen ONC Health IT Certification Program certification criteria for capabilities to allow clinical users to tag and withhold data from exchange. Other commenters suggested the alternative was to not adopt the proposed changes to the Privacy and Infeasibility Exceptions as well as the new Protecting Care Access Exception. These commenters supported the sharing of reproductive health information for clinical care.

Response. We appreciate the commenters' suggestions, but their requests specific to imposing certain requirements on developers of certified health IT, which appear to refer to ASTP/ONC's proposal in the HTI–1 Proposed Rule to adopt a new certification criterion ''patient requested restrictions'' in § 170.315(d)(14) and which was not finalized in the HTI–1 Final Rule (89 FR 1301), are outside the scope of this rulemaking. We note that we may consider amending relevant ONC Health IT Certification Program or information blocking regulations in future rulemaking in response to changing market conditions. As to the commenters' suggestions that we not adopt our proposals, we decline to do so as such action would be counter to our stated reasons for the revisions to the exceptions and the new Protecting Care Access Exception.

C. Overall Impact

1. Executive Orders 12866 and 13563—Regulatory Planning and Review Analysis

We have examined the impacts of this final rule as required by Executive Order12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 entitled ''Modernizing Regulatory Review'' (April 6, 2023), the Regulatory Flexibility Act (RFA), section 202 of the Unfunded Mandates reform Act of 1995 (March 22, 1995; Pub. L. 104–4), the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.*), and the Executive Order 13132 on 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). The Executive Order 14094 amends section 3(f) of Executive Order 12866. The amended section 3(f) of

Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OMB's 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) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering 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 Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

An RIA must be prepared for rules that are significant per section 3(f)(1) (annual effect of $200 million or more in any 1 year).

OIRA has determined that this final rule is a significant regulatory action under 3(f) of Executive Order 12866, as amended by E.O. 14094. 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 also determined that this final rule does not meet the criteria set forth in 5 U.S.C. 804(2).

Although we did not include an assessment of the cost and benefits of the proposed information blocking enhancements in the HTI–2 Proposed Rule, we have included an assessment of the finalized information blocking enhancements in this final rule. We have finalized in this final rule preamble several enhancements with respect to the information blocking provisions in 45 CFR part 171. These include the addition of a definition of ''reproductive health care'' for the purpose of information blocking regulations. The enhancements also include revising the Privacy and Infeasibility Exceptions and adding a Protecting Care Access Exception in subpart B of 45 CFR part 171.

Costs

We expect ASTP/ONC to incur an annual cost for issuing educational resources related to the finalized information blocking enhancements. We estimate that ASTP/ONC would issue educational resources each quarter, or at least four times per year. We assume that the resources would be developed by ASTP/ONC staff with the expertise of a GS–15, Step 1 federal employee(s). We calculate the hourly benefits for a federal employee to be equal to one hundred (100) percent of hourly wage. The hourly wage with benefits for a GS–15, Step 1 employee located in Washington, DC is approximately $157.[59]

We estimate it would take ASTP/ONC staff between 50 and 100 hours to develop resources each quarter, or 200 to 400 hours annually. Therefore, we estimate the annual cost to ASTP/ONC would, on average, range from $31,400 to $62,800.

Benefits

We anticipate that the adopted information blocking enhancements will enable actors to determine more easily and with greater certainty whether their practices (acts or omissions) that may or do interfere with access, exchange, or use of EHI (as defined in 45 CFR 171.102) meet the conditions to fall within an information blocking exception. As such, we expect these policies will further improve actors understanding of, and compliance with, the Cures Act information blocking definition. The benefits of the revisions to the Privacy and Infeasibility Exceptions and the new Protecting Care Access Exception are discussed in detail in section III.B (''*Exceptions*'') of this preamble.

D. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The Small Business Administration (SBA) establishes the size of small businesses for Federal Government programs based on average annual receipts or the average employment of a firm.[60]

In the HTI–2 Proposed Rule we noted that the entities that are likely to be directly affected by the information blocking provisions in this final rule are actors within the meaning of 45 CFR 171.102 (health IT developers of certified health IT, health information networks/health information exchanges, and health care providers) under the information blocking regulations (89 FR 63765). The revised and new information blocking exceptions, reflecting practices that do not constitute information blocking, will provide flexibilities and relief for actors subject to the information blocking regulations. In the HTI–2 Proposed Rule (89 FR 63765), we referred readers to our information blocking-related proposals (89 FR 63616 through 63643) and welcomed comments on their impacts on small entities.

Comments. We received no comments on our assessment.

Response. The policies in this final rule, as proposed, establish revised exceptions and a new exception to the information blocking definition that provide flexibilities and relief for actors subject to the information blocking regulations. The exceptions exist as a voluntary means for actors to gain assurance that their practice(s) does not constitute information blocking. In addition, the exceptions (reasonable and necessary activities under the statute) take into account the potential burden on small entities to meet them, such as providing actors the ability to make case-by-case determinations versus using established organizational policies under the Privacy Exception (45 CFR 171.202(b)(1)(ii)) and the new Protecting Care Access Exception (45 CFR 171.206(a)(3)(ii)).

We do not believe that this final rule would create a significant impact on a substantial number of small entities, and the Secretary certifies that this final rule would not have a significant impact on a substantial number of small entities.

E. Executive Order 13132—Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications.

Comments. We received no comments.

Response. Nothing in this final rule imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has federalism implications.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that imposes unfunded mandates on state, local, and tribal governments or the

[59] Office of Personnel and Management. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB_h.pdf.* Accessed December 3, 2024.

[60] The SBA references that annual receipts mean ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service tax return forms.

private sector requiring spending in any one year of $100 million in 1995 dollars, updated annually for inflation. The current inflation-adjusted statutory threshold is approximately $183 million in 2024.

Comments. We received no comments on the application of this law to our proposals finalized in this final rule.

Response. This final rule does not impose unfunded mandates on State, Local, and Tribal governments, or the private sector.

List of Subjects in 45 CFR Part 171

Computer technology, Electronic health record, Electronic information system, Electronic transactions, Health, Healthcare, Health care provider, Health information exchange, Health information technology, Health information network, Health insurance, Health records, Hospitals, Privacy, Public health, Reporting and record keeping requirements, Security.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR part 171 as follows:

PART 171—INFORMATION BLOCKING

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 42 U.S.C. 300jj–52; 5 U.S.C. 552.

■ 2. Amend § 171.102 by adding, in alphabetical order, the definition ''Reproductive health care'' to read as follows:

* * * * *

Reproductive health care means health care, as defined in 45 CFR 160.103, that affects the health of an individual in all matters relating to the reproductive system and to its functions and processes. This definition shall not be construed to set forth a standard of care for or regulate what constitutes clinically appropriate reproductive health care.

* * * * *

■ 3. Amend § 171.202 by revising paragraph (a)(2) and paragraph (e) introductory text to read as follows:

§ 171.202 Privacy exception—When will an actor's practice of not fulfilling a request to access, exchange, or use electronic health information in order to protect an individual's privacy not be considered information blocking?

* * * * *

(a) * * *

(2) The term *individual* as used in this section means one or more of the following—

(i) An individual as defined by 45 CFR 160.103.

(ii) Any other natural person who is the subject of the electronic health information being accessed, exchanged, or used.

(iii) A person who legally acts on behalf of a person described in paragraph (a)(2)(i) of this section in making decisions related to health care as a personal representative, in accordance with 45 CFR 164.502(g).

(iv) A person who is a legal representative of and can make health care decisions on behalf of any person described in paragraph (a)(2)(i) or (ii) of this section.

(v) An executor, administrator, or other person having authority to act on behalf of a deceased person described in paragraph (a)(2)(i) or (ii) of this section or the individual's estate under State or other law.

* * * * *

(e) *Sub-exception—individual's request not to share EHI.* An actor may elect not to provide access, exchange, or use of an individual's electronic health information if the following requirements are met—

* * * * *

■ 4. Amend § 171.204 by revising paragraph (a)(2) to read as follows:

§ 171.204 Infeasibility exception—When will an actor's practice of not fulfilling a request to access, exchange, or use electronic health information due to the infeasibility of the request not be considered information blocking?

(a) * * *

(2) *Segmentation.* The actor cannot fulfill the request for access, exchange, or use of electronic health information because the actor cannot unambiguously segment the requested electronic health information from electronic health information that:

(i) Is not permitted by applicable law to be made available; or

(ii) May be withheld in accordance with 45 CFR 171.201, 171.202, or 171.206 of this part.

■ 5. Add § 171.206 to read as follows:

§ 171.206 Protecting Care Access—When will an actor's practice that is likely to interfere with the access, exchange, or use of electronic health information in order to reduce potential exposure to legal action not be considered information blocking?

An actor's practice that is implemented to reduce potential exposure to legal action will not be considered information blocking when the practice satisfies the condition in paragraph (a) of this section and also satisfies the requirements of at least one of the conditions in paragraphs (b) or (c) of this section.

(a) *Threshold condition.* To satisfy this condition, a practice must meet each of the following requirements:

(1) *Belief.* The practice is undertaken based on the actor's good faith belief that:

(i) Persons seeking, obtaining, providing, or facilitating reproductive health care are at risk of being potentially exposed to legal action that could arise as a consequence of particular access, exchange, or use of specific electronic health information; and

(ii) Specific practices likely to interfere with such access, exchange, or use of such electronic health information could reduce that risk.

(2) *Tailoring.* The practice is no broader than necessary to reduce the risk of potential exposure to legal action that the actor in good faith believes could arise from the particular access, exchange, or use of the specific electronic health information.

(3) *Implementation.* The practice is implemented either consistent with an organizational policy that meets paragraph (a)(3)(i) of this section or pursuant to a case-by-case determination that meets paragraph (a)(3)(ii) of this section.

(i) An organizational policy must:

(A) Be in writing;

(B) Be based on relevant clinical, technical, and other appropriate expertise;

(C) Identify the connection or relationship between the interference with particular access, exchange, or use of specific electronic health information and the risk of potential exposure to legal action that the actor believes the interference could reduce;

(D) Be implemented in a consistent and non-discriminatory manner; and

(E) Conform to the requirements in paragraphs (a)(1) and (2) of this section and to the requirements of at least one of the conditions in paragraphs (b) or (c) of this section that are applicable to the prohibition of the access, exchange, or use of the electronic health information.

(ii) A case-by-case determination:

(A) Is made by the actor in the absence of an organizational policy applicable to the particular situation;

(B) Is based on facts and circumstances known to, or believed in good faith by, the actor at the time of the determination;

(C) Conforms to the conditions in paragraphs (a)(1) and (2) of this section; and

(D) Is documented either before or contemporaneous with engaging in any practice based on the determination. Documentation of the determination must identify the connection or

relationship between the interference with particular access, exchange, or use of specific electronic health information and the risk of potential exposure to legal action.

(4) *Another actor's reliance on good faith belief.* For purposes of this section, an actor who is a business associate of, or otherwise maintains EHI on behalf of, another actor may rely on the good faith belief consistent with paragraph (a)(1) of the section and organizational policy or case-by-case determinations consistent with paragraph (a)(3) of this section of the actor on whose behalf relevant EHI is maintained.

(b) *Patient protection condition.* When implemented for the purpose of reducing the patient's risk of potential exposure to legal action, the practice must:

(1) Affect only the access, exchange, or use of specific electronic health information the actor in good faith believes could expose the patient to legal action because the electronic health information shows, or would carry a substantial risk of supporting a reasonable inference, that the patient:

(i) Obtained reproductive health care;

(ii) Inquired about or expressed an interest in seeking reproductive health care; or

(iii) Has any health condition(s) or history for which reproductive health care is often sought, obtained, or medically indicated.

(2) Be subject to nullification by an explicit request or directive from the patient that the access, exchange, or use of the specific electronic health information occur despite the risk(s) to the patient that the actor has identified.

(3) For purposes of paragraph (b)(1) and (2) of this section, ''patient'' means the natural person who is the subject of the electronic health information or another natural person referenced in, or identifiable from, the EHI as a person who has sought or obtained reproductive health care.

(c) *Care access condition.* When implemented for the purpose of reducing the risk of potential exposure to legal action for one or more licensed health care professionals, other health care providers, or other persons involved in providing or facilitating reproductive health care that is lawful under the circumstances in which such health care is provided, the practice must affect only access, exchange, or use of specific electronic health information that the actor believes could expose a care provider(s) and facilitator(s) to legal action because the information shows, or would carry a substantial risk of supporting a reasonable inference, that they provide or facilitate, or have provided or have facilitated, reproductive health care.

(d) *Presumption.* For purposes of determining whether an actor's practice meets paragraph (b)(1)(i) or (c) of this section, care provided by someone other than the actor is presumed to have been lawful unless the actor has actual knowledge that the care was not lawful under the circumstances in which such care is provided.

(e) *Definition of legal action.* As used in this section, legal action means any one or more of the following—

(1) A criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care;

(2) A civil or criminal action brought in a court to impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care; or

(3) An administrative action or proceeding against any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–29683 Filed 12–16–24; 8:45 am]

BILLING CODE 4150–45–P



FEDERAL REGISTER

Vol. 89 Tuesday,
No. 242 December 17, 2024

Part VIII

Environmental Protection Agency

40 CFR Part 751
Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2020–0642; FRL–8317–02–OCSPP]

RIN 2070–AK83

Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is finalizing a rule to address the unreasonable risk of injury to health presented by trichloroethylene (TCE) under its conditions of use. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the chemical no longer presents unreasonable risk. EPA's final rule will, among other things, prevent serious illness associated with uncontrolled exposures to the chemical by preventing consumer access to the chemical, restricting the industrial and commercial use of the chemical while also allowing for a reasonable transition period with interim worker protections in place where an industrial and commercial use of the chemical is being prohibited, and provide time-limited exemptions for critical or essential uses of TCE for which no technically and economically feasible safer alternatives are available.

DATES: This final rule is effective on January 16, 2025.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0642, is available online at *https://www.regulations.gov.* Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information: Gabriela Rossner, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 565–2426; email address: *TCE.TSCA@epa.gov.*

For general information: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

1. General Applicability

This action applies to you if you manufacture, process, distribute in commerce, use, or dispose of TCE or products containing TCE. TSCA section 3(9) defines the term ''manufacture'' to mean ''to import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), produce, or manufacture.'' Therefore, unless expressly stated otherwise, importers of TCE are subject to any provisions regulating manufacture of TCE (see also Unit I.A.2.). 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 include:

- Crude Petroleum Extraction (NAICS code 211120);
- Fossil Fuel Electric Power Generation (NAICS code 221112);
- Other Electric Power Generation (NAICS code 221118);
- Broadwoven Fabric Mills (NAICS code 313210);
- Narrow Fabric Mills and Schiffli Machine Embroidery (NAICS code 313220);
- Nonwoven Fabric Mills (NAICS code 313230);
- Textile and Fabric Finishing Mills (NAICS code 313310);
- Fabric Coating Mills (NAICS code 313320);
- Wood Window and Door Manufacturing (NAICS code 321911);
- Prefabricated Wood Building Manufacturing (NAICS code 321992);
- Paper Bag and Coated and Treated Paper Manufacturing (NAICS code 322220);
- Petroleum Refineries (NAICS code 324110);
- All Other Petroleum and Coal Products Manufacturing (NAICS code 324199);
- Petrochemical Manufacturing (NAICS code 325110);
- Other Basic Inorganic Chemical Manufacturing (NAICS code 325180);
- Ethyl Alcohol Manufacturing (NAICS code 325193);
- All Other Basic Organic Chemical Manufacturing (NAICS code 325199);
- Plastics Material and Resin Manufacturing (NAICS code 325211);
- Medicinal and Botanical Manufacturing (NAICS code 325411);
- Pharmaceutical Preparation Manufacturing (NAICS code 325412);
- Paint and Coating Manufacturing (NAICS code 325510);
- Adhesive Manufacturing (NAICS code 325520);
- Polish and Other Sanitation Good Manufacturing (NAICS code 325612);
- Photographic Film, Paper, Plate and Chemical Manufacturing (NAICS code 325992);
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS code 325998);
- Polystyrene Foam Product Manufacturing (NAICS code 326140);
- Urethane and Other Foam Product (except Polystyrene) Manufacturing (NAICS code 326150);
- Tire Manufacturing (except Retreading) (NAICS code 326211);
- Tire Retreading (NAICS code 326212);
- Rubber and Plastics Hoses and Belting Manufacturing (NAICS code 326220);
- Rubber Product Manufacturing for Mechanical Use (NAICS code 326291);
- All Other Rubber Product Manufacturing (NAICS code 326299);
- Pottery, Ceramics, and Plumbing Fixture Manufacturing (NAICS code 327110);
- Gypsum Product Manufacturing (NAICS code 327420);
- Iron and Steel Mills and Ferroalloy Manufacturing (NAICS code 331110);
- Iron and Steel Pipe and Tube Manufacturing from Purchased Steel (NAICS code 331210);
- Rolled Steel Shape Manufacturing (NAICS code 331221);
- Steel Wire Drawing (NAICS code 331222);
- Nonferrous Metal (except Aluminum) Smelting and Refining (NAICS code 331410);
- Copper Rolling, Drawing, Extruding, and Alloying (NAICS code 331420);
- Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding (NAICS code 331491);
- Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum) (NAICS code 331492);
- Nonferrous Metal Die-Casting Foundries (NAICS code 331523);
- Iron and Steel Forging (NAICS code 332111);
- Nonferrous Forging (NAICS code 332112);
- Custom Roll Forming (NAICS code 332114);
- Powder Metallurgy Part Manufacturing (NAICS code 332117);
- Metal Crown, Closure, and Other Metal Stamping (except Automotive) (NAICS code 332119);

- Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing (NAICS code 332215);
- Saw Blade and Handtool Manufacturing (NAICS code 332216);
- Metal Window and Door Manufacturing (NAICS code 332321);
- Sheet Metal Work Manufacturing (NAICS code 332322);
- Ornamental and Architectural Metal Work Manufacturing (NAICS code 332323);
- Power Boiler and Heat Exchanger Manufacturing (NAICS code 332410);
- Metal Tank (Heavy Gauge) Manufacturing (NAICS code 332420);
- Metal Can Manufacturing (NAICS code 332431);
- Other Metal Container Manufacturing (NAICS code 332439);
- Hardware Manufacturing (NAICS code 332510);
- Spring Manufacturing (NAICS code 332613);
- Other Fabricated Wire Product Manufacturing (NAICS code 332618);
- Machine Shops (NAICS code 332710);
- Precision Turned Product Manufacturing (NAICS code 332721);
- Bolt, Nut, Screw, Rivet and Washer Manufacturing (NAICS code 332722);
- Metal Heat Treating (NAICS code 332811);
- Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers (NAICS code 332812);
- Electroplating, Plating, Polishing, Anodizing and Coloring (NAICS code 332813);
- Industrial Valve Manufacturing (NAICS code 332911);
- Fluid Power Valve and Hose Fitting Manufacturing (NAICS code 332912);
- Plumbing Fixture Fitting and Trim Manufacturing (NAICS code 332913);
- Other Metal Valve and Pipe Fitting Manufacturing (NAICS code 332919);
- Ball and Roller Bearing Manufacturing (NAICS code 332991);
- Small Arms Ammunition Manufacturing (NAICS code 332992);
- Ammunition (except Small Arms) Manufacturing (NAICS code 332993);
- Small Arms, Ordnance, and Ordnance Accessories Manufacturing (NAICS code 332994);
- Fabricated Pipe and Pipe Fitting Manufacturing (NAICS code 332996);
- All Other Miscellaneous Fabricated Metal Product Manufacturing (NAICS code 332999);
- Farm Machinery and Equipment Manufacturing (NAICS code 333111);
- Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing (NAICS code 333112);
- Construction Machinery Manufacturing (NAICS code 333120);
- Mining Machinery and Equipment Manufacturing (NAICS code 333131);
- Oil and Gas Field Machinery and Equipment Manufacturing (NAICS code 333132);
- Food Product Machinery Manufacturing (NAICS code 333241);
- Semiconductor Machinery Manufacturing (NAICS code 333242);
- Sawmill, Woodworking, and Paper Machinery Manufacturing (NAICS code 333243);
- Printing Machinery and Equipment Manufacturing (NAICS code 333244);
- Other Industrial Machinery Manufacturing (NAICS code 333249);
- Optical Instrument and Lens Manufacturing (NAICS code 333314);
- Photographic and Photocopying Equipment Manufacturing (NAICS code 333316);
- Other Commercial and Service Industry Machinery Manufacturing (NAICS code 333318);
- Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing (NAICS code 333413);
- Heating Equipment (except Warm Air Furnaces) Manufacturing (NAICS code 333414);
- Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS code 333415);
- Industrial Mold Manufacturing (NAICS code 333511);
- Special Die and Tool, Die Set, Jig and Fixture Manufacturing (NAICS code 333514);
- Cutting Tool and Machine Tool Accessory Manufacturing (NAICS code 333515);
- Machine Tool Manufacturing (NAICS code 333517);
- Rolling Mill and Other Metalworking Machinery Manufacturing (NAICS code 333519);
- Turbine and Turbine Generator Set Unit Manufacturing (NAICS code 333611);
- Speed Changer, Industrial High-Speed Drive and Gear Manufacturing (NAICS code 333612);
- Mechanical Power Transmission Equipment Manufacturing (NAICS code 333613);
- Other Engine Equipment Manufacturing (NAICS code 333618);
- Air and Gas Compressor Manufacturing (NAICS code 333912);
- Measuring, Dispensing, and Other Pumping Equipment Manufacturing (NAICS code 333914);
- Elevator and Moving Stairway Manufacturing (NAICS code 333921);
- Conveyor and Conveying Equipment Manufacturing (NAICS code 333922);
- Overhead Traveling Crane, Hoist and Monorail System Manufacturing (NAICS code 333923);
- Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing (NAICS code 333924);
- Power-Driven Hand Tool Manufacturing (NAICS code 333991);
- Welding and Soldering Equipment Manufacturing (NAICS code 333992);
- Packaging Machinery Manufacturing (NAICS code 333993);
- Industrial Process Furnace and Oven Manufacturing (NAICS code 333994);
- Fluid Power Cylinder and Actuator Manufacturing (NAICS code 333995);
- Fluid Power Pump and Motor Manufacturing (NAICS code 333996);
- Scale and Balance Manufacturing (NAICS code 333997);
- All Other Miscellaneous General Purpose Machinery Manufacturing (NAICS code 333999);
- Audio and Video Equipment Manufacturing (NAICS code 334310);
- Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing (NAICS code 334416);
- Electronic Connector Manufacturing (NAICS code 334417);
- Printed Circuit Assembly (Electronic Assembly) Manufacturing (NAICS code 334418);
- Other Electronic Component Manufacturing (NAICS code 334419);
- Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing (NAICS code 334511);
- Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use (NAICS code 334512);
- Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables (NAICS code 334513);
- Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals (NAICS code 334515);
- Electric Lamp Bulb and Part Manufacturing (NAICS code 335110);
- Residential Electric Lighting Fixture Manufacturing (NAICS code 335121);
- Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing (NAICS code 335122);
- Other Lighting Equipment Manufacturing (NAICS code 335129);
- Major Household Appliance Manufacturing (NAICS code 335220);
- Power, Distribution and Specialty Transformer Manufacturing (NAICS code 335311);
- Motor and Generator Manufacturing (NAICS code 335312);
- Switchgear and Switchboard Apparatus Manufacturing (NAICS code 335313);

- Relay and Industrial Control Manufacturing (NAICS code 335314);
- Storage Battery Manufacturing (NAICS code 335911);
- Fiber Optic Cable Manufacturing (NAICS code 335921);
- Current-Carrying Wiring Device Manufacturing (NAICS code 335931);
- Carbon and Graphite Product Manufacturing (NAICS code 335991);
- Automobile Manufacturing (NAICS code 336111);
- Light Truck and Utility Vehicle Manufacturing (NAICS code 336112);
- Heavy Duty Truck Manufacturing (NAICS code 336120);
- Motor Vehicle Body Manufacturing (NAICS code 336211);
- Truck Trailer Manufacturing (NAICS code 336212);
- Motor Home Manufacturing (NAICS code 336213);
- Travel Trailer and Camper Manufacturing (NAICS code 336214);
- Motor Vehicle Gasoline Engine and Engine Parts Manufacturing (NAICS code 336310);
- Motor Vehicle Electrical and Electronic Equipment Manufacturing (NAICS code 336320);
- Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing (NAICS code 336330);
- Motor Vehicle Brake System Manufacturing (NAICS code 336340);
- Motor Vehicle Transmission and Power Train Parts Manufacturing (NAICS code 336350);
- Motor Vehicle Seating and Interior Trim Manufacturing (NAICS code 336360);
- Motor Vehicle Metal Stamping (NAICS code 336370);
- Other Motor Vehicle Parts Manufacturing (NAICS code 336390);
- Aircraft Manufacturing (NAICS code 336411);
- Aircraft Engine and Engine Parts Manufacturing (NAICS code 336412);
- Other Aircraft Part and Auxiliary Equipment Manufacturing (NAICS code 336413);
- Guided Missile and Space Vehicle Manufacturing (NAICS code 336414);
- Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing (NAICS code 336415);
- Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing (NAICS code 336419);
- Railroad Rolling Stock Manufacturing (NAICS code 336510);
- Ship Building and Repairing (NAICS code 336611);
- Boat Building (NAICS code 336612);
- Motorcycle, Bicycle and Parts Manufacturing (NAICS code 336991);
- Military Armored Vehicle, Tank and Tank Component Manufacturing (NAICS code 336992);
- All Other Transportation Equipment Manufacturing (NAICS code 336999);
- Wood Kitchen Cabinet and Counter Top Manufacturing (NAICS code 337110);
- Upholstered Household Furniture Manufacturing (NAICS code 337121);
- Nonupholstered Wood Household Furniture Manufacturing (NAICS code 337122);
- Metal Household Furniture Manufacturing (NAICS code 337124);
- Institutional Furniture Manufacturing (NAICS code 337127);
- Wood Office Furniture Manufacturing (NAICS code 337211);
- Surgical Appliance and Supplies Manufacturing (NAICS code 339113);
- Dental Equipment and Supplies Manufacturing (NAICS code 339114);
- Jewelry and Silverware Manufacturing (NAICS code 339910);
- Sporting and Athletic Goods Manufacturing (NAICS code 339920);
- Gasket, Packing, and Sealing Device Manufacturing (NAICS code 339991);
- Fastener, Button, Needle and Pin Manufacturing (NAICS code 339993);
- All Other Miscellaneous Manufacturing (NAICS code 339999);
- Metal Service Centers and Other Metal Merchant Wholesalers (NAICS code 423510);
- Industrial Supplies Merchant Wholesalers (NAICS code 423510);
- Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690);
- Paint, Varnish, and Supplies Merchant Wholesalers (NAICS code 424950);
- New Car Dealers (NAICS code 441110);
- Used Car Dealers (NAICS code 441120);
- Sporting Goods Stores (NAICS code 451110);
- Scheduled Passenger Air Transportation (NAICS code 481111);
- Other Support Activities for Air Transportation (NAICS code 481111);
- Other Warehousing and Storage (NAICS code 493190);
- Motion Picture and Video Production (NAICS code 512110);
- Other Financial Vehicles (NAICS code 525990);
- Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) (NAICS code 541715);
- Research and Development in the Social Sciences and Humanities (NAICS code 541720);
- Offices of Other Holding Companies (NAICS code 551112);
- Carpet and Upholstery Cleaning Services (NAICS code 561740);
- Hazardous Waste Treatment and Disposal (NAICS code 562211);
- Solid Waste Landfill (NAICS code 562212);
- Materials Recovery Facilities (NAICS code 562920);
- Junior Colleges (NAICS code 611210);
- Colleges, Universities and Professional Schools (NAICS code 611310);
- General Automotive Repair (NAICS code 811111);
- Automotive Exhaust System Repair (NAICS code 811112);
- Automotive Transmission Repair (NAICS code 811113);
- Other Automotive Mechanical and Electrical Repair and Maintenance (NAICS code 811118);
- Automotive Body, Paint and Interior Repair and Maintenance (NAICS code 811121);
- Automotive Glass Replacement Shops (NAICS code 811122);
- Automotive Oil Change and Lubrication Shops (NAICS code 811191);
- All Other Automotive Repair and Maintenance (NAICS code 811198);
- Consumer Electronics Repair and Maintenance (NAICS code 811211);
- Computer and Office Machine Repair and Maintenance (NAICS code 811212);
- Communication Equipment Repair and Maintenance (NAICS code 811213);
- Other Electronic and Precision Equipment Repair and Maintenance (NAICS code 811219);
- Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance (NAICS code 811310);
- Home and Garden Equipment Repair and Maintenance (NAICS code 811411);
- Other Personal and Household Goods Repair and Maintenance (NAICS code 811490);
- Coin-Operated Laundries and Drycleaners (NAICS code 812310);
- Drycleaning and Laundry Services (except Coin-Operated) (NAICS code 812320); and
- Industrial Launderers (NAICS code 812332).

2. Applicability to Importers and Exporters

This action may also affect certain entities subject to import certification and export notification requirements under TSCA (*https://www.epa.gov/tsca-import-export-requirements).* Persons who import any chemical substance in bulk form, as part of a mixture, or as

part of an article (if required by rule) are subject to TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 (see also 19 CFR 127.28(i)). Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA (see 19 CFR 12.121). The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

In addition, any persons who export or intend to export a chemical substance that is the subject of this final rule 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. Any person who exports or intends to export TCE must comply with the export notification requirements in 40 CFR part 707, subpart D.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if the Agency determines through a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, EPA must by rule apply one or more requirements listed in TSCA section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents such risk.

C. What action is the Agency taking?

Pursuant to TSCA section 6(b), EPA determined in 2023 that TCE presents an unreasonable risk of injury to health, without consideration of costs or other non-risk factors, including an unreasonable risk to potentially exposed or susceptible subpopulations (PESS) identified by EPA as relevant to the 2020 Risk Evaluation for TCE under the conditions of use (Refs. 1, 2). A description of the conditions of use that contribute to EPA's determination that TCE presents an unreasonable risk is in III.B.1. of the proposed rule (88 FR 74712, October 31, 2023 (FRL–8317–01–OCSPP), with a summary in Unit II.C.4 of this final rule. Accordingly, to address the unreasonable risk, EPA is issuing this final rule to:

(i) Prohibit the manufacture (including import), processing, and distribution in commerce of TCE for all uses (including all consumer uses (see Unit IV.B.2.)), as described in Unit IV.B., with longer compliance timeframes for manufacture, processing, and distribution in commerce related to certain industrial and commercial uses;

(ii) Prohibit the industrial and commercial use of TCE, as described in Unit IV.B.1., with longer compliance timeframes for certain uses;

(iii) Prohibit the manufacture (including import) and processing of TCE as an intermediate for the manufacturing of hydrofluorocarbon 134a (HFC–134a), following an 8.5-year phase-out, as described in Unit IV.B.3.;

(iv) Prohibit the industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors, following a 10-year phase-out, outlined in Unit IV.B.4.;

(v) Prohibit the manufacture (including import), processing, distribution in commerce, and use of TCE as a laboratory chemical for asphalt testing and recovery, following a 10-year phase-out, outlined in Unit IV.B.5.;

(vi) Prohibit the manufacture (including import), processing, distribution in commerce, and industrial and commercial use of TCE as a solvent in batch vapor degreasing for essential aerospace parts and components and narrow tubing used in medical devices, following a 7-year TSCA section 6(g) exemption, outlined in Unit IV.G.1.;

(vii) Prohibit the manufacture (including import), processing, distribution in commerce, and industrial and commercial use of TCE as a solvent in closed loop vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors, following a 7-year TSCA section 6(g) exemption, outlined in Unit IV.G.2.;

(viii) For vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems, prohibit the industrial and commercial use of TCE as: potting compounds for naval electronic systems and equipment; sealing compounds for high and ultra-high vacuum systems; bonding compounds for materials testing and maintenance of underwater systems and bonding of nonmetallic materials; and cleaning agents to satisfy cleaning requirements (which includes degreasing using wipes, sprays, solvents and vapor degreasing) for: materials and components required for military ordnance testing; temporary resin repairs in vessel spaces where welding is not authorized; ensuring polyurethane adhesion for electronic systems and equipment repair and installation of elastomeric materials; various naval combat systems, radars, sensors, equipment; fabrication and prototyping processes to remove coolant and other residue from machine parts; machined part fabrications for naval systems; installation of topside rubber tile material aboard vessels; and vapor degreasing required for substrate surface preparation prior to electroplating processes, following a 10-year TSCA section 6(g) exemption, outlined in Unit IV.G.3.;

(ix) Prohibit the emergency industrial and commercial use of TCE in furtherance of the NASA mission for specific conditions which are critical or essential and for which no technically and economically feasible safer alternative is available, following a 10-year TSCA section 6(g) exemption, outlined in Unit IV.G.4.;

(x) Prohibit the manufacture (including import), processing, distribution in commerce, disposal, and use of TCE as a processing aid for manufacturing battery separators for lead acid batteries, following a 20-year TSCA section 6(g) exemption, as described in Unit IV.G.5.;

(xi) Prohibit the manufacture (including import), processing, distribution in commerce, disposal, and use of TCE as a processing aid for manufacturing specialty polymeric microporous sheet materials following a 15-year TSCA section 6(g) exemption, as described in Unit IV.G.6.;

(xii) Prohibit the manufacture (including import), processing, distribution in commerce, and use of TCE as a laboratory chemical for essential laboratory activities and some research and development activities, following a 50-year TSCA section 6(g) exemption, as described in Unit IV.G.7.;

(xiii) Require strict workplace controls to limit exposure to TCE, including compliance with a TCE workplace chemical protection program (WCPP), which would include requirements for an interim existing chemical exposure limit (ECEL) revised from the proposed rule, as well as dermal protection, for conditions of use with long term phase-outs or time-limited exemptions under TSCA section 6(g), as described in Unit IV.C., or prescriptive workplace controls, as described in Unit IV.D.;

(xiv) Prohibit the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works, through a phaseout allowing for longer timeframes for disposal necessary for certain industrial and commercial uses as described in Unit IV.B.6., along with a 50-year TSCA section 6(g)

exemption for disposal for cleanup projects before prohibition, as described in Unit IV.G.8., and interim requirements for wastewater worker protection, as described in Unit IV.E.; and

(xv) Establish recordkeeping and downstream notification requirements, as described in Unit IV.F.

EPA notes that all TSCA conditions of use of TCE are subject to this final rule. ''Conditions of use'' is defined in TSCA section 3(4) to mean the circumstances, as determined by EPA, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.

D. Why is the Agency taking this action?

Under TSCA section 6(a), ''[i]f the Administrator determines in accordance with subsection (b)(4)(A) that the manufacture, processing, distribution in commerce, use or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Administrator shall by rule . . . apply one or more of the [section 6(a)] requirements to such substance or mixture to the extent necessary so that the chemical substance no longer presents such risk.'' TCE was the subject of a risk evaluation under TSCA section 6(b)(4)(A) that was issued in November 2020 (Ref. 1). In addition, EPA issued a revised unreasonable risk determination for TCE in January 2023 (Ref. 2), determining that TCE, as a whole chemical substance, presents an unreasonable risk of injury to health under the conditions of use. On October 31, 2023, EPA issued a proposed rule (88 FR 74712) (FRL–8317–01–OCSPP) under TSCA section 6(a) to regulate TCE so that it no longer presents unreasonable risk (hereinafter ''2023 TCE proposed rule''). The Agency received public comment on the proposed rule, and with this action, EPA is finalizing the 2023 TCE proposed rule with modifications so that TCE no longer presents an unreasonable risk. The conditions of use that contribute to the unreasonable risk from TCE are described in Unit III.B.1. of the 2023 TCE proposed rule.

EPA emphasizes that while some of the adverse effects from TCE exposure are experienced following acute single exposures, other risks are incurred following long-term repeated exposures. Risks of non-cancer effects, specifically fetal cardiac defects and autoimmunity, are the most sensitive adverse effects following exposure. In addition, risks of other significant adverse outcomes associated with TCE exposure include: non-cancer effects (liver toxicity, kidney toxicity, neurotoxicity, immunosuppression, reproductive toxicity, and developmental toxicity), as well as cancer (liver, kidney, and non-Hodgkin's lymphoma). This final rule will eliminate the unreasonable risk to human health from TCE, as identified in the 2020 Risk Evaluation for TCE (Ref. 1) and the 2023 Revised Unreasonable Risk Determination for TCE (Ref. 2).

While EPA's rule will result in a ban of TCE, the timeframes for the phase-outs differ across conditions of use and are described in fuller detail in Unit IV.B. One phase-out is for uses that may impact the Agency's efforts to address climate-damaging HFCs (and the associated adverse impacts on human health and the environment) under the American Innovation and Manufacturing Act of 2020 (AIM Act) (42 U.S.C. 7675). EPA is implementing a longer phase-out in tandem with strict workplace controls for the manufacturing (including import) and processing of TCE as an intermediate in the generation of HFC–134a, one of the regulated substances subject to a phasedown under the AIM Act. More information on HFC–134a is in Unit V.A.1. of the 2023 TCE proposed rule.

Additionally, the Agency recognizes that alternatives to TCE may not be readily available for some important conditions of use. As an example, EPA is finalizing a longer phase-out timeframe for industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors. Currently, substitutes and alternative processes do not meet the technical specifications required to clean the rayon fabric in order to safely produce rockets. Similarly, EPA is finalizing a longer phase-out for the industrial and commercial use of TCE in laboratory use for asphalt testing and recovery, based on information provided by state departments of transportation and regulated entities regarding the timeframes needed for revising state certifications that currently include this use of TCE for, among other activities, enabling the recycling of asphalt.

Additionally, EPA recognizes that some conditions of use may be important for national security applications or for other critical needs. For these reasons, this final rule includes a 15-year exemption under TSCA section 6(g) for industrial and commercial use of TCE as a processing aid for battery separator manufacturing in the production of lead-acid battery separators, as well as for the manufacturing, processing, and distribution in commerce of TCE for this use. EPA recognizes that battery separators are essential components of batteries that power vehicles and systems in the U.S. supply chain for multiple critical infrastructure sectors within the national economy. Further, there are a number of critical uses required for DoD vessels. EPA is finalizing a 10-year exemption under TSCA section 6(g) for DoD vessel requirements for potting, bonding and sealing compounds, and bonding and cleaning requirements for naval combat systems, radars, sensors, equipment, and fabrication and prototyping processes. Additionally, EPA is finalizing a 50-year exemption under TSCA section 6(g) for the industrial and commercial use of TCE for critical laboratory activities; for example, laboratory activities associated with ongoing environmental cleanup projects that fall under the Superfund program or other similar EPA authorities, in which it is necessary to use TCE as a laboratory chemical for the analysis of contaminated soil, air, and water samples.

EPA proposed and is finalizing a requirement to comply with a WCPP, which includes monitoring, adherence to industrial hygiene best practices, and requirements to meet an interim ECEL as a condition for most of the conditions of use for which a phase-out or time-limited exemption was provided. For the remaining conditions of use for which a phase-out or time-limited exemption was provided, EPA is requiring prescriptive worker controls. For many of the conditions of use for which EPA is finalizing longer phase-outs or time-limited exemptions under the WCPP, data were submitted to support many commenters' position that a higher interim ECEL than the limit proposed is necessary for successful implementation of worker protections before those conditions of use are prohibited. These comments were submitted to inform the risk evaluation, Small Business Advocacy Review (SBAR) Panel process, the comment period following publication of the 2023 TCE proposed rule, or during stakeholder outreach, and are available in the corresponding public dockets (EPA–HQ–OPPT–2020–0642; EPA–HQ–OPPT–2019–0500; EPA–HQ–OPPT–2016–0737, respectively).

E. What are the estimated incremental impacts of this action?

EPA has prepared an Economic Analysis of the potential incremental impacts associated with this rulemaking that can be found in the rulemaking

docket (Ref. 3). As described in more detail in the Economic Analysis (Ref. 3), EPA was unable to quantify all incremental costs of this rule. The quantifiable cost of the rule is estimated to be $64.1 million annualized over 20 years at a 2% discount rate, $71.3 million annualized at 3%, and $102.4 million annualized at a 7% discount rate. These costs take into consideration costs of compliance with implementation of an interim WCPP for certain conditions of use, based on an interim ECEL of 0.2 ppm (1.07 mg/m^3) for inhalation exposures as an 8-hour time-weighted average (TWA), costs for transitioning to alternatives, where possible, and reformulation costs of numerous products. Estimated costs for the interim WCPP include costs for monitoring and applicable personal protective equipment (PPE). There are a number of notable unquantified costs. These are described in this Unit and more fully in section 7.12 of the Economic Analysis.

Alternative products with similar cost and efficacy are available for most of the products that are formulated with TCE. However, for some applications, there may be additional unquantified costs associated with the alternatives including costs to develop alternatives where they are not currently available. For instance, in some cases, some effort might be required by firms using TCE products to identify suitable alternatives, test them for their desired applications, learn how to use them safely and effectively, and implement new processes for using the alternative products. There may also be some safety-critical applications, such as energized electrical equipment cleaners and adhesives and sealants specifically for aerospace applications, where alternatives would need to undergo extensive safety reviews and testing before they could replace the TCE products. The information to estimate how often these costs might be incurred or what the specific costs would be per-user or per-firm when they are incurred is not available. Therefore, EPA is unable to consider these costs quantitatively.

There also may be some unquantified costs associated with the implementation of a WCPP. EPA used available air monitoring data as well as modelled data to estimate a distribution of exposure concentrations, but since these data were not collected in the same way monitoring data under a WCPP would be collected, these estimated distributions are uncertain and therefore, the costs of compliance with the WCPP are uncertain. The WCPP costs also assume that when the exposure levels exceed the interim ECEL, compliance is achieved by implementing a respirator PPE program. However, and consistent with the hierarchy of controls, the final rule requires implementation of feasible engineering and administrative controls before using PPE to reduce exposure to or below the interim ECEL. These costs would be specific to individual firms, and EPA does not have sufficient information to estimate these costs.

The costs of alternative identification, testing, and potential process changes could not be estimated for battery separator manufacturers, synthetic paper processors, and fluoroelastomer producers. It is expected that these facilities would need to adopt process and/or physical plant changes in order to comply with the rule. EPA does not have sufficient information to estimate the costs of the prohibition to these sectors.

EPA expects the processing of TCE as an intermediate for the manufacture of HFC–134a to decline over time, in light of the AIM Act requirements (Ref. 4). At some point, the domestic manufacture of HFC–134a may be discontinued. While the timing for this discontinuation is uncertain, it is unclear whether this rule will hasten the closure of plants that use TCE to produce HFC–134a. There could be some unknown cost impacts associated with hastening the closure of these two plants.

EPA is finalizing a 10-year phase-out for the industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors, conditioned on Federal agencies performing within 5 years a final pre-launch test of rocket booster nozzles that have been produced without using TCE. EPA does not have information to estimate the cost of such a test. The prohibition of TCE used in vapor degreasing for narrow tubing for aerospace and medical devices is expected to require testing and certification of alternative solvents and/or processes to meet strict safety and performance requirements. These costs will be specific to a facility's design, selected alternative, and end use of the product. EPA does not have information to estimate the costs associated with meeting these safety and performance requirements.

The disposal of TCE from cleanup projects to industrial pre-treatment, industrial treatment, or publicly owned treatment works is prohibited after the TSCA section 6(g) exemption ends, 50 years after the rule is finalized. If cleanup is not finished by the end of this time period and the TSCA section 6(g) exemption has not been extended, cleanup sites will need to identify and implement alternative disposal or treatment methods and will likely also need to renegotiate Resource Conservation and Recovery Act (RCRA) permits or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) agreements to include those changes. These approaches could be more costly to implement and/or increase the duration of cleanups allowing any potential environmental or human health impacts to continue for a longer period of time. The information to estimate how often these costs might be incurred or what the specific costs would be per site when they are incurred is not available.

During the timeframe of the exemptions, this rule requires owners and operators of cleanup sites with TCE exposures to potentially exposed persons (*e.g.,* workers or others in the workplace, such as persons directly handling the chemical or in the area where the chemical is being used) as well as publicly owned treatment works (POTWs) receiving TCE wastes from cleanup sites, battery separator manufacturers, and specialty polymeric microporous sheet material manufacturers to comply with the Occupational Safety and Health Administration's (OSHA's) Hazardous Waste Operations and Emergency Response (HAZWOPER) requirements modified to incorporate the interim ECEL (for cleanup sites) and WCPP requirements modified to include a water screening method (for POTWs). EPA does not have sufficient information to estimate the number of sites and workers that may need to meet the requirements to protect potentially exposed persons and could not estimate the costs for those protections. In addition, the economic analysis does not estimate costs regarding disposal of TCE or TCE-containing products after the effective date prohibiting the industrial and commercial use and disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works. The final rule includes a staggered compliance timeline throughout the supply chain to allow for much of the TCE to be used before disposal is necessary. However, some unused product may need to be disposed of as hazardous waste. Since there is no reliable way of estimating the volume of this waste, the additional disposal costs are not quantified in this economic

analysis. Finally, EPA could not estimate any potential business closures or off-shoring of businesses that might result from the rule. Vapor degreasing is one use of TCE where switching to a suitable alternative may be challenging and where closing or off-shoring may be a compliance strategy. EPA estimates that 366 facilities still use TCE in vapor degreasers, a majority of which are small businesses. There is no standard generally accepted approach for estimating the cost impacts of a firm closure. Despite information EPA has sought from stakeholders and commenters, including through a SBAR Panel, it is not clear whether or how many firms might choose closure as a compliance strategy, nor what the costs might be.

Following the mandate of TSCA to address unreasonable risk to health as well as in alignment with the goals of President Biden's Cancer Moonshot, the rule will protect people from cancer and other significant adverse health effects of TCE by prohibiting the manufacture (including import), processing, and distribution in commerce of TCE for all uses while allowing for a longer reasonable transition period or time-limited exemptions for certain uses (Ref. 5). The actions in this final rule are expected to achieve health benefits for the American public, some of which can be monetized and others that, while tangible and significant, cannot be monetized due to data and methodology limitations. The monetized benefits of this rule are approximately $22.9 million to $ 23.2 million annualized over 20 years at a 2% discount rate, $18.2 million to $18.3 million annualized over 20 years at 3%, and $8.7 million to $ 8.9 million annualized over 20 years at a 7% discount rate. These monetized benefits only include potential reductions in risk of liver, kidney, and non-Hodgkin's lymphoma cancers associated with reducing chronic TCE exposure.

There are a number of non-cancer endpoints associated with exposure to TCE, including liver toxicity, kidney toxicity, reproductive effects, neurotoxicity, immunotoxicity effects and fetal cardiac defects (Ref. 1). There is human evidence for hepatitis accompanying immune-related generalized skin diseases, jaundice, hepatomegaly, hepatosplenomegaly, and liver failure in TCE-exposed workers and changes in the proximal tubules of the kidney following exposure to TCE, and occupational studies have shown increased levels of kidney damage (proximal tubules) and end-stage renal disease in TCE-exposed workers. Evidence exists to associate TCE with reproductive effects. Most human studies support an association between TCE exposure and alterations in sperm density and quality, as well as changes in sexual drive or function and serum endocrine levels. Fewer epidemiological studies exist linking decreased incidence of fecundability (time-to pregnancy) and menstrual cycle disturbances in women with TCE exposures. Human studies have consistently reported vestibular system related symptoms such as headaches, dizziness, and nausea following TCE exposure. Several newer epidemiological studies have found an association between TCE exposure and neurodegenerative disorders such as amyotrophic lateral sclerosis and Parkinson's disease (Ref. 1). EPA does not have sufficient information to estimate the monetized benefits of the rule with respect to these noncancer effects, and therefore monetized benefits are likely underestimated.

EPA does estimate that there 67,869 workers and occupational non-users (ONUs, or people who do not directly handle the chemical, but are in close proximity) exposed to TCE and of those, approximately 1,162 pregnant workers and ONUs annually that may potentially benefit from a reduced risk of fetal cardiac defects resulting from reduced TCE exposure. Although EPA has not developed a complete estimate of the monetized benefits associated with avoiding fetal cardiac defects, as described in the Economic Analysis (Ref. 3), Arth, Tinker et al. (Ref. 6) estimated a mean annual cost of $41,166 (2013$) (median $14,552) for each fetal cardiac defects-associated hospitalization. For critical fetal cardiac defects, mean and median costs were estimated at $79,011 and $29,886 (2013$), respectively, for each incidence. In addition to hospitalization costs, individuals with fetal cardiac defects will likely incur healthcare costs associated with physician visits and outpatient care. They are also more likely to require specialized healthcare such as medications, physical or speech therapy, or treatment for developmental or behavioral problems (Ref. 7). Additional social costs may include caregiver burden and mental health services (Ref. 8), as well as non-market costs such as pain and suffering and fetal cardiac defect-related mortality. Because these costs are not accounted for, monetized benefits are likely underestimated. The severity of specific types of fetal cardiac defects and associated costs will vary depending on the type of heart defect.

Additionally, to the extent that the rule reduces the amount of TCE in drinking water systems and thereby exposures to populations using those drinking water sources, there could be potential health-related benefits related to improved drinking water quality that EPA was unable to quantify.

II. Background

A. Overview of TCE

As described in more detail in the 2023 TCE proposed rule, TCE is an immunotoxicant and developmental toxicant and is carcinogenic to humans by all routes of exposure. This final rule is specifically intended to address the unreasonable risk of injury to health that EPA has identified in the 2020 Risk Evaluation for TCE (Ref. 1) and 2023 Revised Unreasonable Risk Determination (Ref. 2), as described in Unit II.D. of the 2023 TCE proposed rule. TCE is a volatile organic compound (VOC) used in industry as well as in commercial and consumer products. The total aggregate annual production volume ranged from 100 to 250 million pounds between 2016 and 2019 according to the most recent (2020) Chemical Data Reporting (CDR) data (Ref. 9). The majority of TCE is processed as an intermediate during the manufacture of refrigerants, specifically HFC–134a, which accounts for about 83.6% of TCE's annual production volume (Ref. 1). TCE is also used as a solvent, frequently in cleaning and degreasing (including spot cleaning, vapor degreasing, cold cleaning, and aerosol degreasing), which accounts for another 14.7% of TCE production volume. Other uses account for approximately 1.7% of TCE production volume. TCE is used as a solvent in a variety of commercial and consumer applications including in lubricants, adhesives and sealants, paints and coatings, and other miscellaneous products.

B. Regulatory Actions Pertaining to TCE

Because of its significant adverse health effects, TCE is subject to numerous State, Federal, and international regulations restricting and regulating its use. A summary of EPA regulations pertaining to TCE, as well as other Federal, State, and international regulations, is in the docket (Ref. 10).

As described in more detail in the 2023 TCE proposed rule and in the Response to Public Comments document (Ref. 11), EPA considered the adequacy of the current regulation of TCE by OSHA for protection of workers. EPA notes that the standards for chemical hazards that OSHA promulgates under the Occupational Safety and Health (OSH) Act share a

broadly similar purpose with the worker protection-related standards that EPA promulgates under TSCA section 6(a). The control measures OSHA and EPA require to satisfy the objectives of their respective statutes may also, in many circumstances, overlap or coincide. However, there are important differences between EPA's and OSHA's regulatory approaches and jurisdiction, and EPA considers these differences when deciding whether and how to account for OSHA requirements when evaluating and addressing potential unreasonable risk to workers so that compliance requirements are clearly explained to the regulated community. TSCA risk evaluations are subject to statutory science standards, an explicit requirement to consider risks to potentially exposed or susceptible subpopulations, and a prohibition on considering costs and other non-risk factors when determining whether a chemical presents an unreasonable risk that warrants regulatory actions—all requirements that do not apply to development of OSHA regulations. As such, EPA may find unreasonable risk for purposes of TSCA notwithstanding OSHA requirements. In addition, health standards issued under section 6(b)(5) of the OSH Act must reduce significant risk only to the extent that it is technologically and economically feasible. OSHA's legal requirement to demonstrate that its section 6(b)(5) standards are technologically and economically feasible at the time they are promulgated often precludes OSHA from imposing exposure control requirements sufficient to ensure that the chemical substance no longer presents a significant risk to workers. While it is possible in some cases that the OSHA standards for some chemicals reviewed under TSCA will eliminate unreasonable risk, based on EPA's experience thus far in conducting occupational risk assessments under TSCA, EPA believes that OSHA chemical standards would in general be unlikely to address unreasonable risk to workers within the meaning of TSCA, since TSCA section 6(b) unreasonable risk determinations may account for unreasonable risk to more sensitive endpoints and working populations than OSHA's risk evaluations typically contemplate and EPA is obligated to apply TSCA section 6(a) risk management requirements to the extent necessary so that the unreasonable risk is no longer presented. Because the requirements and application of TSCA and OSHA regulatory analyses differ, it is necessary for EPA to conduct risk evaluations and, where it finds unreasonable risk to workers, develop risk management requirements for chemical substances that OSHA also regulates, and it is expected that EPA's findings and requirements may sometimes diverge from OSHA's. Additional considerations of OSHA standards in the revised unreasonable risk determination are discussed further in the 2023 Revised Unreasonable Risk Determination for TCE (88 FR 1222, January 9, 2023 (FRL–9945–02–OCSPP)).

C. Summary of EPA's Risk Evaluation Activities on TCE

In July 2017, EPA published the scope of the TCE risk evaluation (82 FR 31592, July 7, 2017 (FRL–9963–57)), and, after receiving public comments, published the problem formulation in June 2018 (83 FR 26998, June 11, 2018 (FRL–9978–40)). In February 2020, EPA published a draft risk evaluation (85 FR 11079, February 26, 2020 (FRL–10005–52)), and, after public comment and peer review by the Science Advisory Committee on Chemicals (SACC), EPA issued the 2020 Risk Evaluation for TCE in November 2020 in accordance with TSCA section 6(b) (85 FR 75010, November 24, 2020 (FRL–10016–91)). EPA subsequently issued a draft revised TSCA risk determination for TCE (87 FR 40520, July 7, 2022 (FRL–9945–01–OCSPP)), and, after public notice and comment, published a Revised Risk Determination for TCE in January 2023 (88 FR 1222, January 9, 2023 (FRL–9945–02–OCSPP)). The 2020 Risk Evaluation for TCE and supplemental materials are in Docket ID No. EPA–HQ–OPPT–2019–0500, and the January 2023 Revised Unreasonable Risk Determination for TCE and additional materials supporting the risk evaluation process are in Docket ID No. EPA–HQ–OPPT–2016–0737. Both dockets can be accessed online through *https://www.regulations.gov.*

1. 2020 Risk Evaluation for TCE

In the 2020 Risk Evaluation for TCE, EPA evaluated risks associated with 54 conditions of use within the following categories: manufacture (including import), processing, distribution in commerce, industrial and commercial use, consumer use, and disposal (Ref. 1). Descriptions of these conditions of use are in Unit III.B.1. of the 2023 TCE proposed rule. The 2020 Risk Evaluation for TCE identified significant adverse health effects associated with short- and long-term exposure to TCE. A further discussion of the hazards of TCE is presented in Unit III.B.2. of the 2023 TCE proposed rule.

2. 2023 Revised Unreasonable Risk Determination for TCE

As described in more detail in EPA's 2023 TCE proposed rule, EPA revised the original unreasonable risk determination based on the 2020 Risk Evaluation for TCE and issued a final revised unreasonable risk determination in January 2023 (Ref. 2). EPA revised the risk determination for the 2020 Risk Evaluation for TCE pursuant to TSCA section 6(b) and consistent with Executive Order 13990 (''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'') and other Administration priorities. The revisions consisted of making the risk determination based on the whole chemical substance instead of making risk determinations for each individual condition of use, which resulted in the revised risk determination superseding the prior ''no unreasonable risk'' determinations for specific conditions of use (Ref. 2), the withdrawal of the associated TSCA section 6(i)(1) ''no unreasonable risk'' order, and clarification that the risk determination does not reflect an assumption that all workers are always provided and appropriately wear PPE (Ref. 2).

EPA determined that TCE presents an unreasonable risk of injury to health and did not identify risks of injury to the environment that contribute to the unreasonable risk determination for TCE. The TCE conditions of use that contribute to EPA's determination that the chemical substance poses unreasonable risk to health are listed in the unreasonable risk determination (Ref. 2) and the 2023 TCE proposed rule, with descriptions to aid chemical manufacturers, processors, and users in determining how their particular use or activity would be addressed under the final regulatory action.

3. Description of Unreasonable Risk

EPA has determined that TCE presents an unreasonable risk of injury to human health under the conditions of use based on acute and chronic non-cancer risks and cancer risks (Ref. 2). As described in the TSCA section 6(b) 2020 Risk Evaluation for TCE, EPA identified non-cancer adverse effects from acute and chronic inhalation and dermal exposures to TCE, and for cancer from chronic inhalation and dermal exposures to TCE (Ref. 1). In the TCE risk characterization, the endpoints identified by EPA as the basis for the unreasonable risk determination in the Risk Conclusions were immunosuppression effects for acute inhalation and dermal exposures, and

autoimmunity effects for chronic inhalation and dermal exposures (Ref. 1). Additional risks associated with other non-cancer adverse effects (*e.g.,* developmental toxicity, immunosuppression, liver toxicity, kidney toxicity, neurotoxicity, autoimmunity, and reproductive toxicity) were identified for acute and chronic inhalation and dermal exposures. EPA also concluded, based on EPA's Guidelines for Carcinogen Risk Assessment (Ref. 12), that TCE is carcinogenic by all routes of exposure, and identified cancer risk (liver, kidney, and non-Hodgkin lymphoma) from chronic inhalation and dermal exposures (Ref. 2). Unit VII. of the 2023 TCE proposed rule summarizes the health effects and the magnitude of the exposures.

To make the unreasonable risk determination for TCE, EPA evaluated exposures to PESS including workers, ONUs, consumer users, and bystanders to consumer use by using reasonably available monitoring and modeling data for inhalation and dermal exposures (Ref. 1). EPA conducted a screening-level analysis to assess potential risks from the air and water pathways to fenceline communities. A discussion of EPA's analysis and the expected effects of this rulemaking on fenceline communities is in Unit VII.A. of the 2023 TCE proposed rule.

For the 2020 Risk Evaluation for TCE, and as discussed in Unit II.D.1. and Unit III.A.3. of the 2023 TCE proposed rule, EPA considered PESS. EPA identified the following groups as PESS: workers and ONUs, including men and women of reproductive age, adolescents, and biologically susceptible subpopulations; and consumer users and bystanders (of any age group, including infants, toddlers, children, and elderly), including biologically susceptible subpopulations. Additionally, older pregnant women are identified as especially susceptible to cardiac defects in their developing fetus based on epidemiological data (Ref. 1). All PESS are included in the quantitative and qualitative analyses described in the 2020 Risk Evaluation for TCE and were considered in the determination of unreasonable risk for TCE (Refs. 1, 2).

4. Conditions of Use Subject to This Regulatory Action

As noted in Unit I.C. of this final rule, the term ''conditions of use'' is defined in TSCA section 3(4). Condition of use descriptions are provided in Unit III.B.1. of the 2023 TCE proposed rule and were obtained from EPA sources such as CDR use codes, the 2020 Risk Evaluation for TCE and related documents, as well as the Organisation for Economic Co-operation and Development harmonized use codes, and stakeholder engagements. EPA did not receive public comments identifying inaccuracies or necessitating changes to those descriptions; however, EPA received some comments requesting clarification for particular uses, which can be found in the Response to Comments document (Ref. 11). Additionally, to assist with implementation and compliance with the final rule, in Units IV.C.1., IV.D.1., and IV.E.1. of this final rule, EPA has provided a description of the conditions of use that are subject to the WCPP or other workplace controls during phaseout or time-limited exemption before prohibition.

For the purposes of this final rule, ''occupational conditions of use'' refers to the TSCA conditions of use other than consumer use as described in Units III.B.1.a., b., c., and e. of the 2023 TCE proposed rule. Although EPA identified both industrial and commercial uses in the 2020 Risk Evaluation for TCE (Ref. 1) for purposes of distinguishing scenarios, the Agency clarified then and clarifies now that EPA interprets the authority Congress gave to the Agency to ''regulat[e] any manner or method of commercial use'' under TSCA section 6(a)(5) to reach both industrial and commercial uses.

Additionally, as described in the 2023 TCE proposed rule and in the 2020 Risk Evaluation for TCE (Ref. 1), EPA identified and assessed all known, intended, and reasonably foreseen industrial, commercial, and consumer uses of TCE. EPA determined that all industrial, commercial, and consumer uses of TCE evaluated in the 2020 Risk Evaluation for TCE contribute to the unreasonable risk of injury to health. As such, for purposes of this risk management rule, ''consumer use'' refers to all known, intended, or reasonably foreseen TCE consumer uses. Likewise, for the purpose of this risk management rule, ''industrial and commercial use'' refers to all known, intended, or reasonably foreseen TCE industrial and commercial uses.

EPA further notes that this rule does not apply to any substance excluded from the definition of ''chemical substance'' under TSCA section 3(2)(B)(i) through (vi). Those exclusions include, but are not limited to, any pesticide (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide; and any food, food additive, drug, cosmetic, or device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic or device.

D. EPA's 2023 Proposed Rule for TCE

1. Description of TSCA Section 6(a) Requirements

Under TSCA section 6(a), if the Administrator determines through a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a PESS identified as relevant to the Agency's risk evaluation, under the conditions of use, EPA must by rule apply one or more of the section 6(a) requirements to the extent necessary so that the chemical substance no longer presents such risk.

The TSCA section 6(a) requirements can include one or more of the following actions alone or in combination:

- Prohibit or otherwise restrict the manufacturing (including import), processing, or distribution in commerce of the substance or mixture, or limit the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce (section 6(a)(1)).
- Prohibit or otherwise restrict the manufacturing, processing, or distribution in commerce of the substance or mixture for a particular use or above a specific concentration for a particular use (section 6(a)(2)).
- Limit the amount of the substance or mixture which may be manufactured, processed, or distributed in commerce for a particular use or above a specific concentration for a particular use specified (section 6(a)(2)).
- Require clear and adequate minimum warning and instructions with respect to the substance or mixture's use, distribution in commerce, or disposal, or any combination of those activities, to be marked on or accompanying the substance or mixture (section 6(a)(3)).
- Require manufacturers and processors of the substance or mixture to make and retain certain records or conduct certain monitoring or testing (section 6(a)(4)).
- Prohibit or otherwise regulate any manner or method of commercial use of the substance or mixture (section 6(a)(5)).
- Prohibit or otherwise regulate any manner or method of disposal of the substance or mixture, or any article containing such substance or mixture,

by its manufacturer or processor or by any person who uses or disposes of it for commercial purposes (section 6(a)(6)).

- Direct manufacturers or processors of the substance or mixture to give notice of the unreasonable risk determination to distributors, certain other persons, and the public, and to replace or repurchase the substance or mixture (section 6(a)(7)).

In the 2023 TCE proposed rule, EPA analyzed how the TSCA section 6(a) requirements could be applied to address the unreasonable risk from TCE so that it no longer presents such risk. This unit summarizes the TSCA section 6 considerations for issuing regulations under TSCA section 6(a), and Unit IV. outlines how EPA applied these considerations while managing the unreasonable risk from TCE.

As required, EPA developed a proposed regulatory action and one primary alternative regulatory action, which are described in Units V.A. and V.B. of the 2023 TCE the proposed rule, respectively. To identify and select a regulatory action, EPA considered the two routes of exposure driving the unreasonable risk, inhalation and dermal, and the exposed populations. For occupational conditions of use, EPA considered how it could directly regulate manufacturing (including import), processing, distribution in commerce, industrial and commercial use, or disposal to address the unreasonable risk. EPA also considered how it could exercise its authority under TSCA to regulate the manufacturing (including import), processing, and/or distribution in commerce of TCE at different levels in the supply chain to eliminate exposures or restrict the availability of TCE and TCE-containing products for consumer use in order to address the unreasonable risk.

As required by TSCA section 6(c)(2), EPA considered several factors, in addition to identified unreasonable risk, when selecting among possible TSCA section 6(a) regulatory requirements for the proposed rule. EPA's considerations regarding TSCA section 6(c)(2) for TCE are discussed in full in Unit VII. of the 2023 TCE proposed rule, including the statement of effects with respect to the section 6(c)(2)(A) considerations.

As described in more detail in the 2023 TCE proposed rule, EPA also considered regulatory authorities under statutes administered by other agencies such as the Occupational Safety and Health (OSH) Act, the Consumer Product Safety Act (CPSA), and the Federal Hazardous Substances Act (FHSA), as well as other EPA-administered statutes, to examine (1) Whether there are opportunities to address unreasonable risk under other statutes, such that a referral may be warranted under TSCA section 9(a) or 9(b); or (2) Whether TSCA section 6(a) regulation could include alignment of requirements and definitions in and under existing statutes and regulations to minimize confusion to the regulated entities and the general public.

Additionally, as described in more detail in EPA's 2023 TCE proposed rule in Unit VI.B, EPA considered the availability of alternatives when finalizing a prohibition or a substantial restriction (TSCA section 6(c)(2)(C)), and in setting final compliance dates in accordance with the requirements in TSCA section 6(d)(1).

To the extent information was reasonably available, EPA considered pollution prevention strategies and the hierarchy of controls adopted by OSHA and the National Institute for Occupational Safety and Health (NIOSH) when developing its proposed rule, with the goal of identifying risk management control methods that would be permanent, feasible, and effective. EPA also considered how to address the unreasonable risk while providing flexibility to the regulated community where appropriate and took into account the information presented in the 2020 Risk Evaluation for TCE (Ref. 1), input from stakeholders, insight received during consultations, and anticipated compliance strategies from regulated entities.

Taken together, these considerations led EPA to the proposed regulatory action and primary alternative action described in this Unit. Additional details related to how the requirements in this Unit were incorporated into development of the proposed rule and primary alternative action are in Unit VI. of the 2023 TCE proposed rule.

2. Consultations and Other Engagement

a. Consultations

EPA conducted consultations and outreach as part of development of the 2023 TCE proposed rule. The Agency held a federalism consultation from July 22, 2021, until October 22, 2021, as part of the rulemaking process and pursuant to Executive Order 13132 (Ref. 13).

EPA also consulted with tribal officials during the development of the 2023 TCE proposed rule. The Agency held a tribal consultation from May 17, 2021, to August 20, 2021, with meetings on June 15 and July 8, 2021 (Ref. 14). EPA received no written comments as part of this consultation.

EPA's environmental justice (EJ) consultation occurred from June 3, 2021, through August 20, 2021. On June 16 and July 6, 2021, EPA held public meetings as part of this consultation. These meetings were held pursuant to Executive Orders 12898 and 14008. EPA received three written comments following the EJ meetings, in addition to oral comments provided during the consultations (Refs. 15, 16, 17, 18). A brief summary of the comments is in Unit III.A.1 of the 2023 TCE proposed rule.

As required by section 609(b) of the Regulatory Flexibility Act (RFA), EPA convened a SBAR Panel to obtain advice and recommendations from Small Entity Representatives (SERs) that potentially would be subject to the rule's requirements. EPA met with SERs before and during Panel proceedings, on October 28, 2022, and January 31, 2023. Panel recommendations were presented in the SBAR Panel report (Ref. 19) and were addressed in Unit XI.C. of the 2023 TCE proposed rule and in the Initial Regulatory Flexibility Analysis (IRFA) (Ref. 20). EPA has also prepared a Final Regulatory Flexibility Analysis (FRFA) (Ref. 21).

More information about these consultations is presented in Units III.A.1., XI.C., XI.E., XI.F., and XI.J. of the 2023 TCE proposed rule.

b. Other Stakeholder Consultations

For development of the proposed rule, in addition to the formal consultations described in Unit XI. of the 2023 TCE proposed rule, EPA provided an overview of the TSCA risk management process and the risk evaluation findings for TCE on December 15, 2020 (Ref. 22). EPA also presented on the TSCA risk management process and the findings in the 2020 Risk Evaluation for TCE at a Small Business Administration (SBA) Office of Advocacy Environmental Roundtable on December 18, 2020 (Ref. 19). Attendees of these meetings were given an opportunity to voice their concerns regarding the risk evaluation and risk management.

Furthermore, during development of the proposed rule, EPA engaged in discussions with representatives from different industries, non-governmental organizations, technical experts, organized labor, and users of TCE. A list of external meetings held during the development of the 2023 TCE proposed rule is in the docket (Ref. 23); meeting materials and summaries are also in the docket. See Unit III.A.2. of the 2023 TCE proposed rule for a summary of the topics discussed during the meetings.

c. Children's Environmental Health

The Agency's 2021 Policy on Children's Health (Ref. 24) requires EPA

to protect children from environmental exposures by consistently and explicitly considering early life exposures (from conception, infancy, and early childhood and through adolescence until 21 years of age) and lifelong health in all human health decisions through identifying and integrating children's health data and information when conducting risk assessments. TSCA section 6(b)(4)(A) also requires EPA to conduct risk evaluations ''to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment . . . including an unreasonable risk to a PESS identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' In addition, TSCA section 6(a) requires EPA to apply one or more risk management requirements so that TCE no longer presents an unreasonable risk (which includes unreasonable risk to any relevant PESS). Information about the health and risk assessments supporting this action and how the Policy was applied is presented in Unit II.C., II.D., and IV.A. of the 2023 TCE proposed rule, as well as in the 2020 Risk Evaluation for TCE, and the Economic Analysis for this rule (Refs. 25, 1, 3).

3. Proposed Regulatory Action

EPA's 2023 TCE proposed rule under TSCA section 6(a) to address the unreasonable risk presented by TCE under its conditions of use included the following:

(i) Prohibition of the manufacture (including import), processing, and distribution in commerce of TCE for all uses (including all consumer uses), with longer compliance timeframes for manufacture and processing related to certain uses;

(ii) Prohibition of the industrial and commercial use of TCE, with longer compliance timeframes for certain uses;

(iii) Prohibition of the manufacture (including import) and processing of TCE as an intermediate for the manufacturing of HFC–134a, following an 8.5-year phase-out;

(iv) Prohibition of the industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors, following a 10-year phase-out;

(v) For vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems, prohibition of the industrial and commercial use of TCE as: potting compounds for naval electronic systems and equipment; sealing compounds for high and ultra-high vacuum systems; bonding compounds for materials testing and maintenance of underwater systems and bonding of nonmetallic materials; and cleaning agents to satisfy cleaning requirements (which includes degreasing using wipes, sprays, solvents and vapor degreasing) for: materials and components required for military ordinance testing; temporary resin repairs in vessel spaces where welding is not authorized; ensuring polyurethane adhesion for electronic systems and equipment repair and installation of elastomeric materials; various naval combat systems, radars, sensors, equipment; fabrication and prototyping processes to remove coolant and other residue from machine parts; machined part fabrications for naval systems; installation of topside rubber tile material aboard vessels; and vapor degreasing required for substrate surface preparation prior to electroplating processes, following a 10-year TSCA section 6(g) exemption;

(vi) Prohibition of the manufacture (including import), processing, distribution in commerce, and use of TCE as a processing aid for battery separator manufacturing, following a 10-year TSCA section 6(g) exemption;

(vii) Prohibition of the manufacture (including import), processing, distribution in commerce, and use of TCE as a laboratory chemical for essential laboratory activities and some research and development activities, following a 50-year TSCA section 6(g) exemption;

(viii) Prohibition of the manufacture (including import), processing, distribution in commerce, and industrial and commercial use of TCE as a solvent in closed loop vapor degreasing necessary for human-rated rocket engine cleaning by NASA and its contractors, following a 7-year TSCA section 6(g) exemption;

(ix) Prohibition of the emergency industrial and commercial use of TCE in furtherance of the NASA mission for specific conditions which are critical or essential and for which no technically and economically feasible safer alternative is available, following a 10-year TSCA section 6(g) exemption;

(x) Requirements for strict workplace controls, including compliance with a TCE WCPP, which would include requirements for an inhalation exposure limit and dermal protection to limit exposure to TCE, for conditions of use with long term phase-outs or time-limited exemptions under TSCA section 6(g);

(xi) Prohibition of, due to worker risks, the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works, with a 50-year TSCA section 6(g) exemption for cleanup projects; and

(xii) Requirements for recordkeeping and downstream notification.

EPA notes that all TSCA conditions of use of TCE were subject to the 2023 TCE proposed rule and are subject to this final rule.

The proposed rule included timeframes for implementation. The prohibitions EPA proposed would take effect in phases, beginning at the top of the supply chain, and coming into full effect, for most conditions of use, after 90 days for manufacturers, in 180 days for processors, and in 270 days for most industrial and commercial users, with different timeframes related to specific conditions of use. Specifically, for processing TCE as a reactant/intermediate, EPA proposed that the compliance dates for the proposed prohibitions would come into effect in 1.5 years for manufacturers and 2 years for processors EPA proposed additional exceptions from the prohibition for the manufacturing and processing associated with certain processing and industrial and commercial uses, including phase-outs (see Units V.A.1.b., d., and e., of the 2023 TCE proposed rule or time-limited exemptions under TSCA section 6(g) (see Unit V.A.3.b. of the 2023 TCE proposed rule). Likewise, for the WCPP that would be required for several conditions of use before prohibitions went into effect, EPA proposed timeframes for phases of compliance, beginning with monitoring at 180 days and full implementation after 1 year, as described in Unit V.A.1. of the 2023 TCE proposed rule.

As required under TSCA section 6(c)(2)(A)(iv)(II) through (III), EPA presented its consideration of an alternative regulatory action in the Unit V.B. of the 2023 TCE proposed rule. Similar to the proposed regulatory action, the alternative regulatory action combined prohibitions with requirements for a WCPP for certain conditions of use before they would be prohibited, to address the unreasonable risk from TCE under its conditions of use. The primary alternative regulatory action described in the proposed rule differed from the proposed regulatory action by providing longer timeframes for prohibitions, and by describing an ECEL based on a different health endpoint (*i.e.,* immunotoxicity), as part of the WCPP that would be required for the conditions of use of TCE that would be permitted to continue for longer than one year after publication of the final rule until the prohibition compliance dates. The ECEL for the WCPP under the

proposed rule's primary alternative regulatory action was based on the endpoint used for EPA's unreasonable risk determination for TCE under TSCA (*i.e.,* immunotoxicity (Ref. 2)). In contrast, the ECEL for the WCPP under the proposed regulatory action was based on the most sensitive health endpoint (developmental toxicity). The rationale for these differences is discussed in Unit V.A, of this rule and Unit VI.A.1.a. of the 2023 TCE proposed rule.

For a comprehensive overview of the alternative regulatory action, refer to Unit V.B. of the 2023 TCE proposed rule, with the rationale for the primary alternative regulatory action provided in Unit VI.B. of the 2023 TCE proposed rule.

4. Public Comments Received

EPA requested comment on all aspects of the 2023 TCE proposed rule. During the public comment period, EPA held a webinar on November 14, 2023, providing an overview of the proposed rule and TSCA section 6; during the webinar, members of the public had the opportunity to share their perspectives (Ref. 26). The comment period closed on December 15, 2023. EPA received almost 30,000 public comments, with a vast majority received from individuals participating in mass mailer campaigns organized by non-governmental organizations. The public comments also include approximately 200 unique comments from industry stakeholders, trade associations, environmental groups, unions, non-governmental health advocacy organizations, academics, State and local governments, and members of the regulated community. A summary of the comments, as well as EPA's responses, is in the docket for this rulemaking (Ref. 11). Additionally, Unit III. contains summaries of public comments that informed EPA's regulatory approach in this final rule.

After the close of the public comment period for the proposed rule, EPA held meetings with stakeholders to receive clarifying information on their comments, including affected industry and interested groups, related to the use of TCE. Topics of these meetings included exposure controls, process descriptions, monitoring data, and specific conditions of use. EPA received data as part of and following these stakeholder meetings and has made the information available to the public in the rulemaking docket (EPA–HQ–OPPT–2020–0642) (Ref. 27).

After review of the public comments received from the 2023 TCE proposed rule, EPA revised certain preliminary considerations that impacted the length of time-limited exemptions from prohibition under TSCA section 6(g) and key provisions of the WCPP (including identification of a new, interim ECEL), among other changes. Similarly, based on public comments received, EPA modified for this final rule several proposed compliance timeframes, with details provided in Unit III. of this final rule.

III. Changes From the Proposed Rule

This unit summarizes the main changes from the 2023 TCE proposed rule to the final rule, based on the consideration of the public comments.

A. Changes to the WCPP

As part of the conditions for exemptions under TSCA section 6(g) or phase-outs for several conditions of use before prohibition, EPA proposed to require owners or operators to comply with a WCPP to reduce exposures and risks to potentially exposed persons. Numerous commenters expressed concern regarding the requirements of the WCPP. While EPA is finalizing as proposed many aspects of the WCPP, the final rule includes several significant changes, based on consideration of public comments. The details of and rationale for these changes are described in this Unit and EPA notes that in the event that sensitive information relating to national security or critical infrastructure is submitted to EPA, the Agency will protect such information in accordance with applicable authorities.

1. Interim Occupational Exposure Limit

EPA proposed requirements to comply with the TCE WCPP for all conditions of use that would continue for one year or more before prohibition, as an interim measure to reduce exposures to TCE in the workplace. As part of the TCE WCPP, EPA proposed that each owner or operator of a workplace subject to the TCE WCPP ensure that no person is exposed to airborne concentrations above the occupational exposure limit to the extent possible. EPA proposed an existing chemical exposure limit, or ECEL, of 0.0011 ppm as an 8-hour TWA. In proposing to set this risk-based exposure limit, EPA described in Unit IV.A. of the 2023 TCE proposed rule how the ECEL is based on developmental toxicity, the most sensitive acute and chronic non-cancer health endpoint, specifically calculated based on the occupational acute, non-cancer human equivalent concentration for fetal cardiac defects (Ref. 28).

EPA also described in Unit V.A.2. of the 2023 TCE proposed rule how a WCPP provides regulated entities with some flexibility in the manner in which they implement modifications, within certain parameters, or otherwise aim to prevent exceedances of inhalation exposure limits at their facilities. EPA proposed or finalized a WCPP for several conditions of use for other chemicals regulated under TSCA section 6, such as methylene chloride (89 FR 39254, May 8, 2024 (FRL–8155–01–OCSPP)), perchloroethylene (PCE) (88 FR 39652, June 16, 2023 (FRL–8329–02–OCSPP)), and carbon tetrachloride (88 FR 49180, July 28, 2023) (FRL–8206–01–OCSPP)). The proposed TCE WCPP differed from those other proposals in two key ways. First, EPA intended for the TCE WCPP to be in place only as an interim measure before prohibitions take effect (rather than continuing in perpetuity, as was the case in the other proposed rules cited previously). Second, for the reasons described in Unit VI. of the 2023 TCE proposed rule, the proposed rule, including the challenges of reliably reducing exposure below the ECEL and being able to monitor at the appropriate action level, EPA's proposed requirement for the TCE WCPP was that owners or operators ensure that no person is exposed to TCE in excess of the ECEL of 0.0011 ppm as an 8-hr TWA *to the extent possible* rather than (as has been proposed in other rules under TSCA section 6) a requirement that exposures *do not exceed* the ECEL. Due to these challenges in reducing exposure, as well as the severity of the hazard from TCE, EPA emphasizes that, even with the proposed ECELs, EPA cannot ensure that TCE does not present unreasonable risk to workers and, therefore, it is not a substitute for a ban as a long-term risk management solution. Thus, prohibition of all conditions of use ultimately is necessary to address the unreasonable risk.

In the 2023 TCE proposed rule, EPA requested comment on the proposed ECEL (including the feasibility of the limit, the associated action level of 0.00055 ppm as an 8-hr TWA, monitoring methods, and whether a phased approach is desirable). EPA also requested comment on the ECEL described in the alternative regulatory action (0.004 ppm as an 8-hr TWA, based on the immunotoxicity endpoint).

Numerous commenters expressed concern that EPA proposed that compliance with the WCPP would be measured by reaching and documenting the lowest exposure level that could be achieved, instead of a requirement to meet an exposure limit (Refs. 29, 30,

and 31). Additional commenters stated it would not be technically feasible to meet the proposed ECEL (Refs. 32, 33), despite what they described as robust implementation of engineering and administrative controls (Refs. 34, 35). These and other commenters described how they are not aware of any additional feasible engineering or administrative controls that would enable them to avoid, under the TCE WCPP, having employees wear supplied-air respirators at all times (Refs. 34, 35, 36, 37). Commenters expressed several concerns with requiring employees to wear supplied-air respirators at all times (Refs. 34, 35). Industry commenters requested a higher interim occupational exposure limit that would not require an unworkably burdensome level of PPE; commenters provided numerous suggestions for alternate ECEL values such as 0.36 ppm, 5 ppm, or 6 ppm, each expressed as 8-hr TWAs (Refs. 38, 39, 40, 41). Commenters offered these alternate occupational exposure limits based on either their current monitoring or on regulatory values set in other countries, to reduce reliance on extensive respiratory PPE. Commenters noted that setting an ECEL at the level proposed level or at the alternative regulatory action ECEL would require potentially exposed persons across all industries to use high levels of respiratory protection that EPA acknowledges can represent an occupational hazard on its own. EPA recognizes the challenges of respiratory PPE. As detailed in the proposed rule in Unit VI.A.1.b., and in OSHA's 1998 final rule to update its respiratory protection standard, which cited communication problems, vision problems, worker fatigue, and reduced work efficiency among such challenges. (63 FR 1152, January 8, 1998). As OSHA explained, ''improperly selected respirators may afford no protection at all (for example, use of a dust mask against airborne vapors), may be so uncomfortable as to be intolerable to the wearer, or may hinder vision, communication, hearing, or movement and thus pose a risk to the wearer's safety or health.'' (63 FR 1189 through 1190).

In addition to describing anticipated challenges in meeting the proposed or the alternative regulatory action ECEL, commenters also described the challenges they would expect in attempting to monitor indoor air TCE concentrations at or below the ECEL and ECEL action level of 0.00055 ppm or the alternative ECEL and alternative ECEL action level of 0.0002 ppm. Specifically, several commenters emphasized that laboratories would need to transition from typical methods that use sorbent tubes and sample media solvent desorption (OSHA Method 1001) to a more sensitive method that may involve a completely different approach, such as a relevant EPA Compendium Method, and that these may still not be sufficient due to a level of detection of volatile organic compounds above 0.5 parts per billion by volume (ppbv), which is above the proposed ECEL action level (Refs. 38, 39, 42). The commenters also discussed the EPA TO–17 Method, which uses a sorbent tube/thermal desorption/gas chromatographic-based monitoring method for VOCs, but emphasized the use of thermal desorption is not common across the industry (Refs. 38, 39). EPA agrees that while available monitoring and analytical methods for TCE are possible in the low parts-per-billion range, typical occupational sampling methods such as OSHA method 1001 (*i.e.,* personal breathing zone monitoring) used in industrial hygiene generally allow detection in the 10 to 100 ppb range (or 0.010 ppm to 0.100 ppm) (Ref. 38). Widespread adoption of monitoring and sampling methods that could meet a TCE ECEL in the low parts-per-billion range would be difficult, expensive, and take at least several years. Public commenters specifically requested the option to be able to use methods common in occupational sampling, both for familiarity and from a commercial lab capacity perspective, and pointed out the proposed ECEL would not provide that ability (Ref. 38). Additionally, setting a regulatory occupational exposure limit at 0.0011 ppm would be incompatible with the NIOSH-recommended best practice of monitoring to a fraction (specifically 10%) of the occupational exposure limit in order to quantify results, because 0.0011ppm is significantly lower than the detection limits of available monitoring and analytical methods for TCE.

One commenter, a union, stated that setting an ECEL at a level that cannot be measured would render the rule unenforceable and would therefore be meaningless for employees continuing to work with TCE during the phase-out period (Ref. 29). Another commenter, an industry trade organization, asserted that lowering exposures ''to the extent possible'' is unenforceable (Ref. 43). Based on the significant feasibility challenges described by commenters; the need for a robust, implementable, and enforceable WCPP for conditions of use that would continue for more than a year before prohibition; EPA's strong interest in rapidly putting into place the TCE WCPP and resulting exposure reductions; and the forthcoming future prohibitions that will take effect on these conditions of use, EPA is finalizing an interim ECEL of 0.2 ppm as an 8-hr TWA with an associated interim ECEL action level of 0.1 ppm as an 8-hr TWA. This occupational exposure level is achievable to meet, can be reliably and consistently monitored, and will provide an interim level of protection for conditions of use with longer timeframes until prohibition.

Several commenters supported the risk-based exposure limit that was proposed, and stated that, in their view, it is supported by sound scientific evidence (Refs. 31, 44, 29, 45). The proposed ECEL is based on data presented in the risk evaluation, which is the best available science. EPA emphasizes that modifying the final TCE WCPP to include an interim ECEL does not diminish the scientific rationale for the risk-based exposure limit that EPA proposed. EPA's justification for identification of the ECEL that would address unreasonable risk as 0.0011 ppm as an 8-hr TWA is described in detail in the notice of proposed rulemaking and highlighted section 5 of the Response to Comments document (Ref. 11). EPA also emphasizes that this interim ECEL is specific to TSCA and incorporates different considerations than limits or levels set for TCE exposures in other contexts or inhalation exposures that are regulated under other authorities, such as RCRA. EPA's action to finalize an interim ECEL for TCE under TSCA is based on feasibility considerations during ongoing occupational use of TCE beyond one year. Specifically, the interim ECEL takes into account significant challenges potentially exposed persons would experience from extensive respiratory PPE use in an occupational setting.

EPA is finalizing an interim ECEL of 0.2 ppm as an 8-hr TWA. This interim ECEL takes into account considerations raised by the commenters, such as feasibility of implementation in several critical or essential industries, Specifically, EPA expects that the various industries subject to the interim ECEL can meet the interim ECEL with exposure controls that are feasible for owners and operators to implement for potentially exposed persons over a full shift, using engineering controls and, in some instances, respiratory PPE. While certain supplied air respirators could be used to reduce exposures below the proposed exposure limit, these respirators are burdensome and EPA is

not confident that they could be effectively and consistently implemented on an ongoing basis in a way that fully addresses the unreasonable risk. EPA views extremely high levels of PPE (*e.g.,* assigned protection factor (APF) 10,000) as unable to consistently and over a long timeframe address occupational risk. As noted earlier, setting an ECEL at the level proposed would require potentially exposed persons across all industries to use high levels of respiratory protection, such as APF 10,000 supplied air respirators, that EPA acknowledges could represent an occupational hazard on its own due to communication problems, vision problems, worker fatigue, and reduced work efficiency. The interim ECEL allows for more robust use of the hierarchy of controls.

The interim ECEL was also developed with consideration for risk reduction and health protectiveness. EPA estimates that the 0.2 ppm interim ECEL would reduce estimated baseline chronic workplace exposure by 97% (Ref. 28). The reduction in the baseline excess cancer risk is estimated to be proportional to the reduction in exposure. Acute health effects would also be reduced to the extent that they are proportional to exposure reduction. For example, based on EPA's TSCA TCE risk evaluation, the 0.2 ppm interim ECEL is protective of the acute immunotoxicity endpoint.

Lastly, the interim ECEL allows for occupational monitoring methodologies based on validated active, passive, and direct-read instrumentation. There are several available active sampling methods (*e.g.,* OSHA 1001, OSHA 5000) that are fully validated methods that readily allow for compliance with the interim ECEL value of 0.2 ppm for all affected industries. As described elsewhere in this preamble, this rule is also finalizing an interim ECEL action level that serves as a trigger for certain compliance activities (*e.g.,* periodic monitoring). Therefore, it is important for regulated entities to be able to reliably and accurately measure both the interim action level and the interim ECEL value. The interim ECEL also enables use of the NIOSH 1003 (active sampling) method as well as field portable instruments that use the NIOSH 3701 method for occupational monitoring. While real-time monitoring with a digital measure device is not required for rule compliance, EPA understands the practical benefits of field portable and/or real-time occupational exposure monitoring. In the near term, the interim ECEL and the associated interim action level aids with implementation of the WCPP from the perspective of monitoring methodology and availability. Setting the interim ECEL at a value of 0.2 ppm allows for the immediate implementation of the WCPP, as monitoring methods are currently available and widely recognized and used. A lower value interim ECEL would pose technical challenges (*i.e.,* achievable with only a subset of monitoring methods) and be less feasible.

EPA emphasizes that the regulatory limit adopted in this final rule (0.2 ppm as an 8-hr TWA) will be a significant reduction from the current regulatory occupational exposure limit (*i.e.,* 500 times lower than the current OSHA PEL of 100 ppm as an 8-hr TWA) as well as more than 50 times lower than the voluntary standard frequently cited by commenters (10 ppm as an 8-hr TWA). EPA expects that regulated entities may need to make significant, but feasible, changes from current practice by adopting the WCPP to reduce inhalation exposures sufficiently and provide risk reduction to potentially exposed persons. EPA also recognizes that the interim ECEL of 0.2 ppm as an 8-hr TWA does not fully address the unreasonable risk from TCE, hence, the term ''interim.'' Potentially exposed persons may continue to be at risk for the developmental and immunotoxicity effects that provide the basis for EPA's ultimate prohibition. Given the risk profile for TCE, EPA is addressing the unreasonable risk through prohibition, and acknowledging the critical or essential nature of several conditions of use affected by providing reasonable timeframes and time-limited exemptions for a TCE prohibition. A WCPP including the interim ECEL will be required as an interim measure for each of the conditions of use listed in Unit IV.C.

The requirement to meet an interim ECEL for the conditions of use for which EPA is finalizing exemptions under TSCA section 6(g) is supported by TSCA section 6(g)(4), which states that ''the Administrator may impose conditions that are necessary to protect health and environment while achieving the purposes of the exemption.'' EPA has determined the interim ECEL of 0.2 ppm is a condition that, as explained in this Unit, allows for implementation and monitoring feasibility, thus achieving the purposes of the exemption, while providing health protectiveness for potentially exposed persons during the duration of the TSCA section 6(g) exemptions. As a condition of the exemption, it protects health by reducing exposure and thus risk significantly: as stated previously, the interim ECEL will reduce estimated baseline chronic workplace exposure by 97%.

For the conditions of use that continue for more than one year subject to the interim ECEL but for which there is no TSCA section 6(g) exemption, EPA also finds that the interim ECEL of 0.2 ppm and interim action level of 0.1 ppm are necessary to reduce the risk during the TSCA section 6(d) timeframe for those conditions of use. Throughout the proposed rule and this final rule, EPA has emphasized the high risk posed by TCE. Due to this risk, the proposed health protective air exposure concentration (proposed ECEL) was so low that facilities would encounter significant difficulty mitigating occupational exposures to this level. Based on information in the 2020 Risk Evaluation (Ref. 1) and on the extensive public comments, facilities would need to augment their existing controls with unreasonably extensive use of burdensome PPE. EPA determined reliance on extreme respiratory protection measures is unlikely to mitigate the occupational risk of TCE, a view corroborated by commenters. In particular, commenters noted that air supplied respirators would present health and safety concerns for workers due to their weight, bulk, impairment of hearing and vision, and interference with use of other safety equipment (Refs. 34, 46, 29). Respiratory protection is considered a last resort because respirators cannot be worn by all persons, are not suitable for all situations, and due to worker discomfort and fatigue, cannot be worn for long periods of time. In addition, as discussed in this Unit, compliance with the WCPP would be challenging; while specialized monitoring and analytical methods are available for TCE in the low parts-per-billion range, typical methods allow for detection in the 10 to 100 ppb (0.01 to 0.1 ppm) range. As a result, EPA determined that any measures short of prohibition are insufficient to address the unreasonable risk from TCE.

2. Worker Protection Measures for Workers Disposing of TCE in Wastewater to Industrial Pre-Treatment, Industrial Treatment, or Publicly Owned Treatment Works

EPA proposed requirements to comply with the TCE WCPP for all conditions of use that would continue for one year or more before prohibition, as an interim measure to reduce exposures to TCE in the workplace. As discussed in Unit III.A.1, numerous commenters stated it would not be technically feasible to monitor to or

meet the proposed ECEL. Commenters emphasized that for wastewater disposal, unlike a typical workplace where a WCPP could apply, work at a cleanup site happens so intermittently that a regular monitoring program would be extremely difficult to develop, requiring owners and operators to implement sampling every time they were in the field. Additionally, the WCPP requires additional monitoring to occur after a change in workplace conditions as a commenter pointed out, which could create a requirement for constant monitoring because cleanup sites are dynamic systems (Ref. 43). In particular regarding the feasibility of compliance with the WCPP, commenters associated with wastewater disposal described that even with the maximum available engineering controls, workers would have to rely on PPE of APF 10,000 to meet the proposed ECEL at cleanup sites (Ref. 47).

As stated in Unit III.A.1, EPA recognizes the challenges of high levels of respiratory protection which include, as described by OSHA, communication problems, vision problems, worker fatigue, and reduced work efficiency. Commenters involved in wastewater cleanup operations were among those who submitted public comments in favor of an interim exposure level that could be reliably measured using current analytical methods (Ref. 33). Additionally, these commenters emphasized that existing RCRA permits require HAZWOPER training for all employees who are exposed or potentially exposed to hazardous substances at cleanup sites. The HAZWOPER standard is a set of established policies, practices, and procedures found in 29 CFR 1910.120. This standard is designed to protect workers who may be exposed to hazardous substances resulting from uncontrolled releases such as natural disasters, equipment malfunctions, or other emergencies (Ref. 48). Operations that fall within the scope of the HAZWOPER standard include cleanup operations required by a government body and corrective actions involving hazardous waste and sites covered by RCRA. Commenters also provided information to EPA on the variety of remediation methods used for TCE contaminated water and groundwater, noting a difference between *ex situ* treatment systems that remove TCE-contaminated groundwater from the ground, and *in situ* treatment systems that remediate the groundwater in its place (Ref. 35). A commenter requested that the HAZWOPER standard, currently implemented at thousands of clean-up sites, should continue to be used instead of EPA's proposed WCPP (Ref. 45). Cleanup sites are dynamic systems that often involve multiple chemical contaminants, and EPA agrees with commenters that the structure and procedures under the HAZWOPER standard are best suited for the unique worker protection scenarios at cleanup sites. However, OSHA's PEL for TCE is 100 ppm as an 8-hour time-weighted average. See 29 CFR 1910.1000, Table Z–2. As discussed in the proposed rule, the OSHA PEL has not been changed since the 1970s (Ref. 49).

For the purposes of the TSCA section 6(g) exemption from prohibition for 50 years for disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works for the purposes of facilitating cleanup projects of TCE-contaminated water and groundwater, based on public comments and coordination across Federal programs, EPA has determined it is appropriate that owners and operators of cleanup sites where potentially exposed persons are involved in the disposal of TCE-contaminated water or groundwater for the purposes of cleanup projects of TCE-contaminated water and groundwater, including industrial pre-treatment and industrial treatment activities, must ensure that potentially exposed persons involved with the activity of removing the contaminated water or groundwater from the location where it was found and treating the removed contaminated water or groundwater on site continue to comply with HAZWOPER requirements but with exposures for potentially exposed persons limited to the interim ECEL for TCE (0.2 ppm as an 8-hr TWA, for reasons discussed in Unit III.A.1.). Specifically, EPA has determined that at cleanup sites, the TCE interim ECEL would apply to any potentially exposed person involved in the disposal of TCE-contaminated water or groundwater to industrial treatment, industrial pre-treatment, or POTWs. A potentially exposed person most likely includes a person who is involved with the activity of removing TCE-contaminated water or groundwater from the location where it was found and the on-site treatment of the TCE-contaminated water or groundwater. EPA generally considers workers in and around those locations to be potentially exposed persons as that term is defined is 40 CFR 751.5. For example, EPA's requirements would apply to protect workers conducting remediation through pump and treat systems or workers sampling groundwater in conjunction with extraction or treatment (*e.g.,* remediation or cleanup) activities. EPA considers treatment activities that are performed at the cleanup site on TCE-contaminated wastewater that has been removed from the subsurface, surface water impoundments, or aquifers, and that are recognized as industrial treatment, industrial pretreatment, or discharge to a POTW to be covered under the provisions described in this unit. To further clarify, the workplace protections for this exemption are not intended to cover potentially exposed persons who may be exposed to TCE from other contaminated media. Additionally, the workplace protections for this exemption are not intended to cover potentially exposed persons who are sampling groundwater to monitor the presence of a plume, but specifically only those sampling wastewater at the site of extraction and active treatment activities. EPA also notes that while the cross-referenced OSHA regulations do not require the establishment of regulated areas, the OSHA regulations do suggest excluding non-essential persons during certain operations as a feasible work practice control.

For cleanup sites involved in the disposal of TCE-contaminated water or groundwater to industrial treatment, industrial pre-treatment, or POTWs, rather than implementing the monitoring, notification, and exposure control plan requirements of the WCPP, in light of the special circumstances of these sites, and the likely presence of multiple contaminants, EPA is requiring compliance with the current requirements in 29 CFR 1910.120 (HAZWOPER) except that for those provisions in 29 CFR 1910.120 that reference a PEL, owners and operators will instead comply with the TSCA interim ECEL. EPA's requirement for cleanup sites to meet specific existing OSHA health and safety requirements in 29 CFR 1910.120 combined with EPA's interim ECEL differs from the requirements for the WCPP that will be in effect in other workplaces. EPA emphasizes that this standard is only for cleanup sites involved in the disposal of TCE contaminated groundwater and wastewater from cleanup sites under the applicable condition of use and that no other remedial actions at cleanup sites will be covered or affected. More specifically, EPA notes that this rule only includes within its scope remediation methods that would be considered industrial wastewater pretreatment, industrial wastewater treatment or discharge to a POTW. As such, a remediation method would need to be considered one of these three types of disposal to fall within this condition

of use under TSCA, and if not would not be subject to the prohibition or other requirements of the rule.

Similarly, some commenters asked EPA to clarify what responsibility the receiver of waste, specifically POTWs, would have regarding compliance with the WCPP and highlighted the challenges of the WCPP in the context of POTWs, some of which may be outdoors and thus unable to demarcate a regulated area in a straightforward way (Refs. 35, 45). EPA emphasizes that disposal of TCE-containing wastewater to and from POTWs is within the disposal condition of use. As exposures to TCE are likely to continue in POTWs for the duration of the exemption for TCE disposal under TSCA section 6(g) for industrial pre-treatment, industrial treatment, or POTWs for the purposes of cleanup projects of TCE-contaminated water and groundwater, and as EPA is interested in reducing to the extent possible exposures to TCE during the time period of this exemption, EPA proposed the WCPP as an appropriate measure. However, under the proposal, the ECEL was so low that, as one commenter stated, ''receivers of groundwater from cleanup sites would be forced to assume that TCE is present, since it is not currently possible to measure down to the ECEL'' (Ref. 45).

Even with a new interim ECEL, based on the public comments and information reasonably available to the agency, EPA recognizes that POTWs have more experience in water monitoring. As an example, commenters described that TCE is measured in wastewater at POTWs as water concentrations, not ambient air levels. Commenters described regular water monitoring schedules of the concentration of TCE in wastewater at the POTWs to which they disposed (Refs. 36, 50, and 51). For this reason, in the final rule, POTW's must comply with either solely the WCPP, or a water monitoring structure already more familiar and implementable for POTWs as the initial screening before the WCPP in the interim until prohibition.

To ease monitoring implementation, EPA has determined that POTWs that can reasonably expect TCE to be present, because of existing industrial users discharging into the POTW, will be able to determine the need to comply with the WCPP by conducting an initial screening of their wastewater. This approach follows EPA's 1992 ''Guidance to Protect POTW Workers from Toxic and Reactive Gases and Vapors'' (Ref. 52) which sets wastewater screening levels for toxic chemicals using Henry's Law constants to translate toxicity-based air exposure concentrations to wastewater concentrations. This monitoring approach also is consistent with water screenings described by several public commenters (Refs. 36, 50, 51). The methodology assumes that wastewater and air are in equilibrium, *e.g.,* that the system is closed and water agitation is negligible; that temperature is defined and constant; and that other constituents in the wastewater do not affect a chemical's volatilization to air.

The water screening requirement that EPA is finalizing follows the methodology in the 1992 guidance, using the Henry's Law constant for TCE (378 $(mg/m^3)/(mg/L)$ at 25 °C) to calculate a screening level for TCE in wastewater, 0.00284 mg/L, that corresponds to the interim ECEL (0.2 ppm). This screening level is a level specific to TSCA, to regulate unreasonable risk to workers performing wastewater disposal that are exposed to TCE. This differs from maximum contaminant levels (MCLs) which regulate public water systems under a different federal statute and do not address exposures to TCE through wastewater. While the screening level is lower than the current enforceable MCL for TCE (0.005 mg/L), the values are within a factor of 2. EPA believes that the conservative assumptions used to derive 0.00284 mg/L are appropriate here because this is a screening approach, and the TCE occupational exposure profile of wastewater workers may be variable.

If the concentration of TCE in wastewater received by a POTW is less than or equal to the screening level, the POTW can assume that the concentration of TCE in air that results from TCE volatilization from wastewater is equal to or less than the interim ECEL. If a POTW's water screening detects TCE in wastewater at a concentration greater than 0.00284 mg/L of TCE, then the WCPP is required. More information is in Unit IV.E.

3. Exposure Monitoring Requirements

As part of the WCPP, EPA proposed to require that owners or operators meet certain documentation requirements for each instance of monitoring of TCE, including compliance with the Good Laboratory Practice (GLP) Standards in accordance with 40 CFR part 792.

Numerous commenters expressed concern regarding the requirement that the WCPP include compliance with the GLP Standards at 40 CFR part 792. Commenters stated that it is atypical to use this standard for air sampling of TCE for industrial hygiene purposes (Refs. 39, 38). According to the commenters, it is common practice within the industrial hygiene community to have analyses performed by American Industrial Hygiene Association (AIHA) accredited labs (Refs. 38, 39). A commenter further reasoned that because labs in the United States are certified by International Organization for Standards (ISO) and the International Electrochemical Commission (IEC) standard 17025 (Testing and Calibration Laboratories), a standard that differs from the proposed GLP, they recommended that provisions of monitoring results and recordkeeping in the final rule be allowed from any accredited laboratory, without regard to a specific type (Refs. 38, 39).

EPA agrees with the commenters that the WCPP for TCE is incompletely served by solely relying on the GLP standard as proposed. EPA has considered laboratory capacity concerns raised by some commenters (*i.e.,* that potential increases in demand for professional safety services and sampling laboratories may strain the broader availability of laboratory service and result in sampling limitations (Refs. 38, 39), and agrees that sufficient infrastructure must be in place to ensure that the regulated community can successfully implement the WCPP while TCE use is ongoing. For the final rule, EPA is requiring that exposure samples be analyzed using an appropriate analytical method by a laboratory that complies with the GLP Standards in 40 CFR part 792 or that otherwise maintains a relevant third-party laboratory accreditation (*e.g.,* under the AIHA Laboratory Accreditation Programs, LLC Policy Module 2A/B/E of Revision 17.3) or other analogous industry-recognized programs. The laboratory must also retain related records.

Another commenter noted that EPA's proposal did not make clear that ''personal breathing zone'' air samples to monitor occupational exposures are to be taken without regard to respirator use. More specifically, the commenter pointed to the importance of EPA being explicit that occupational monitoring only occurs in the absence of respiratory protection (Ref. 29). EPA agrees with the commenter that exposure monitoring should be conducted to reflect ambient occupational conditions (*i.e.,* without respiratory protection) to best inform engineering control options and respiratory protection considerations for potentially exposed persons. Therefore, the final rule now explicitly states that occupational air sampling is required to measure ambient concentrations for TCE without taking respiratory protection into account when air sampling is performed. This will ensure the highest degree of protection to potentially

exposed persons by requiring measurement of ambient air concentrations of TCE, thus empowering owners or operators to appropriately consider the hierarchy of controls.

Additionally, as part of the WCPP, EPA proposed to require owners and operators to re-monitor within 15 working days after receipt of any exposure monitoring if results indicated non-detect or air monitoring equipment malfunction, unless an Environmental Professional, as defined at 40 CFR 312.10, or a Certified Industrial Hygienist reviews the monitoring results and determines re-monitoring is not necessary. EPA received several comments disagreeing with the proposed requirement to review non-detect air monitoring samples. The commenters stated that the requirement is inconsistent with OSHA rules, is an unnecessary step that adds no value to reduce risk to workers, and could be costly, especially for smaller companies (Refs. 53, 54, 55, 47, 56, 57, 58). One commenter suggested that EPA incorporate a six-sample rolling average as the statistical evaluation would incorporate ongoing validation of exposure levels for a particular task and thus remove any need for resampling based on a non-detect result.

EPA disagrees with commenters that expressed the opinion that re-evaluating non-detect results adds no value and is inappropriate. A sampling result that is non-detectable does not necessarily imply negligible occupational exposure to the chemical. A non-detect result is indicative that the chemical was not detected by the particular sampling and analytical procedures used at the time of sampling. Multiple factors can contribute to a non-detect result. For example, the chemical may simply not be present in appreciable quantities. An alternative possibility is that the chemical is present at a level below the limit of detection for the particular sampling and analytical method used. Depending on the chemical and ambient conditions, interference from another chemical during occupational sampling sometimes results in an incorrect reporting of non-detectable levels. This interference may or may not be known by the owner or operator at the time of sampling, or by the laboratory at the time of analysis. It is also possible that the owner's or operator's sampling technique or the laboratory's analytical procedure was not particularly effective, or that the chosen sampling and analytical method was not very efficient or precise for the particular chemical of interest. Therefore, re-evaluating non-detectable sampling results is often appropriate and desirable. In each of the examples described in this paragraph, a nondetectable sampling result, along with supporting documentation about the sampling and analytical method used to get that result, is a meaningful part of the potentially exposed person's exposure record required under the WCPP. Monitoring results from malfunctioning air monitoring equipment are not valid monitoring and require resampling consistent with § 751.315(b)(3)(i)(A) through (D).

The provisions proposed for the WCPP did not require re-monitoring in all cases. Re-monitoring may not be necessary based on a professional evaluation by an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist. The final rule provides flexibility in the event of a non-detect by allowing owners or operators to either re-monitor or seek a determination from a qualified professional that re-monitoring is not necessary. From an owner and operator's perspective, a non-detect sampling result—when effective sampling and analysis procedures are used—is valuable because it suggests effective implementation of exposure controls. Potentially exposed persons may also use these records in discussions with owners and operators, in collective bargaining situations, or in compliance assistance inquiries to EPA or other federal agencies. Exposure monitoring results may also improve overall workplace health and reduce owner and operator liability through effective detection, treatment, and prevention of occupational disease or illness. All of these scenarios are valuable for owners and operators, potentially exposed persons, and for effective mitigation of occupational exposures. In consideration of these factors, EPA has removed the air monitoring equipment malfunction from the monitoring activities that do not require resampling based on professional evaluation by an Environmental Professional or Certified Industrial Hygienist. While professional discretion may be warranted in determining whether re-monitoring is needed following results that indicate non-detect, EPA has determined this discretion is not appropriate in the event of air monitoring equipment malfunction, which warrants re-monitoring. This is due to the importance of air monitoring in ensuring that the requirements of the WCPP are met, and the importance of the WCPP in reducing risks from exposures to TCE in the workplace. Monitoring results from malfunctioning air monitoring equipment are not valid monitoring.

Additionally, while statistical methods may be useful in establishing and analyzing an occupational monitoring program, EPA determined that information presented in support of amending the evaluation of re-monitoring to rely on six sample rolling average of exposure measurements in place of the proposal is not persuasive, as discussed in detail in section 5.5.3 of the Response to Comments document (Ref. 11). Occupational monitoring (and associated recordkeeping) is a topic on which EPA may develop guidance as part of final rule implementation efforts.

Therefore, based on consideration of public comment, EPA is finalizing as proposed with slight modification the requirement to re-monitor within 15 working days after receipt of any exposure monitoring if results indicated non-detect, unless an Environmental Professional, as defined at 40 CFR 312.10, or a Certified Industrial Hygienist reviews the monitoring results and determines re-monitoring is not necessary. EPA has modified the re-monitoring recordkeeping requirement to clarify what would suffice as justification for when re-monitoring is not necessary, and has therefore updated the recordkeeping requirements associated with the WCPP exposure records required under 40 CFR 751.319(b)(1). EPA has also removed air monitoring equipment malfunction from the monitoring activities that do not require resampling if determined unnecessary by an Environmental Professional or Certified Industrial Hygienist.

EPA proposed to require under the WCPP that each owner or operator conduct additional exposure monitoring whenever a change in the production, process, control equipment, personnel, or work practices may reasonably be expected to result in new or additional exposures at or above the ECEL action level, or when the owner or operator has any reason to believe that new or additional exposures at or above the ECEL action level occurred. In the event of start-up, shutdown, spills, leaks, ruptures, or other breakdowns that may lead to employee exposure, EPA proposed to require that each owner or operator conduct additional initial exposure monitoring to potentially exposed persons (using personal breathing zone sampling) after the cleanup of the spill or repair of the leak, rupture, or other breakdown. EPA is finalizing that requirement, with a compliance timeframe requiring that this type of additional exposure monitoring must be conducted within

30 days (see Unit IV.C.4.d.), which is a change from the proposed rule, in which a timeframe was not specified.

4. Designated Representatives

As part of the WCPP, EPA proposed to require that owners and operators (*i.e.,* any person who owns, leases, operates, controls, or supervises a workplace covered by the rule) provide potentially exposed persons or their designated representatives regular access to the exposure control plans, exposure monitoring records, and PPE program implementation and documentation. Additionally, EPA proposed to require that owners or operators document the notice to and ability of any potentially exposed person who may reasonably be affected by TCE exposure to readily access the exposure control plans, facility exposure monitoring records, PPE program implementation, or any other information relevant to TCE inhalation exposure in the workplace.

EPA solicited and received public comments on the role of designated representatives in the WCPP. One commenter, a group of labor unions, urged EPA to incorporate requirements similar to OSHA's access standard at 29 CFR 1910.1020 (entitled, ''Access to employee exposure and medical records'') to ensure that exposure information is promptly and fully shared with both potentially exposed persons and their designated representatives (Ref. 29). The commenter also suggested that EPA include a requirement that employers provide employees and their designated representatives an opportunity to observe monitoring events. The commenter observed that workers and their designated representatives have a critical role to play in ensuring effective control of toxic substances and further noted that, often, unions are the organizations with expertise in understanding occupational exposure information.

EPA recognizes the importance of having the ability for potentially exposed persons and their designated representative(s), such as labor union representatives, to observe exposure monitoring and have prompt access to exposure records. EPA additionally recognizes that, in some instances, individual workers may be hesitant to ask owners or operators for information relating to their chemical exposure or may be less familiar with discipline-specific industrial hygiene practices. EPA determined that it is appropriate in this final rule to revise, to some extent, the requirements regarding designated representatives included in the proposed rule, consistent with existing OSHA precedent in certain 29 CFR part 1910, subpart Z regulations, to allow designated representatives the ability to observe occupational exposure monitoring and have access to exposure monitoring records. The WCPP provisions of the final rule include a requirement that owners and operators provide potentially exposed persons or their designated representatives an opportunity to observe any exposure monitoring that is designed to characterize their exposures and is conducted under the WCPP. With respect to facilities classified in the interest of national security, only persons authorized to have access to such facilities must be allowed to observe exposure monitoring.

The final rule also requires that designated representatives have access to relevant exposure records, similar to provisions in certain OSHA regulations under 29 CFR part 1910, subpart Z, such as 29 CFR 1910.1020. EPA is requiring owners and operators to notify potentially exposed persons and their designated representatives of the availability of the exposure control plan and associated records of exposure monitoring and PPE program implementation within 30 days of the date that the exposure control plan is completed and at least annually thereafter.

EPA's definition of ''designated representative'' in 40 CFR 751.5 was established in the recently promulgated final rule under TSCA section 6(a) that addresses the unreasonable risk presented by PCE (RIN 2070–AK84). This term means any individual or organization to whom a potentially exposed person gives explicit, written authorization to exercise a right of access. A recognized or certified collective bargaining agent must be treated automatically as a designated representative without regard to written authorization, analogous to OSHA requirements set forth in 29 CFR 1910.1200. Additionally, with respect to Federal Government employees, EPA, like OSHA at 29 CFR 1960.2(e), will interpret these designated representative requirements consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. 71), or collective bargaining or other labor-management arrangements that cover the affected employees.

Should a request be initiated for such records by the potentially exposed person or their designated representative(s), the owner or operator will be required to provide the specified records at a reasonable time, place, and manner, analogous to OSHA requirements set forth at 29 CFR 1910.1020(e)(1)(i). If the owner or operator is unable to provide the requested records within 15 working days, the owner or operator must, within those 15 days, inform the potentially exposed person or designated representative(s) requesting the record of the reason for the delay and the earliest date when the record can be made available. Additionally, in the event that a designated representative is observing exposure monitoring, the owner or operator must ensure that designated representatives are provided with PPE appropriate for the observation of monitoring. Finally, this rule requires owners or operators to provide notice to potentially exposed persons and their designated representatives of exposure monitoring results and of the availability of the exposure control plan and associated records. For purposes of this requirement, the owner or operator is only required to provide notice to those designated representatives that the owner or operator is aware of, such as representatives designated in writing or a recognized collective bargaining agent for the owner or operator's own employees.

5. Changes to WCPP Timeframes for Federal Agencies

EPA understands that certain departments and agencies of the Federal government, as well as Federal contractors acting for or on behalf of the Federal government, need additional time to comply with these timeframes. For example, complying with these timeframes could impact the ability of NASA or the Department of Defense to continue to engage in vapor degreasing necessary for rockets key to national security and critical infrastructure. While, for example, 29 CFR part 1960 sets forth procedures and guidelines for ensuring that Federal workers are protected in comparable ways to their non-Federal counterparts, EPA believes that compliance with this final rule will require increased and different preparations on the part of Federal agencies. For example, Federal agencies must follow procurement requirements, which will likely result in increased compliance timelines. In addition, these requirements will require support in the Federal budget, which, for some agencies, is a multi-year process. Therefore, EPA is providing additional time for agencies of the Federal government and their contractors, when acting for or on behalf of the Federal government, to comply with the WCPP, including 915 days for initial monitoring, 1,005 days to ensure that no

person is exposed to an airborne concentration of TCE that exceeds the interim ECEL, and 1,095 days to implement an exposure control plan.

B. Modifications to the TSCA Section 6(g) Exemptions

1. Industrial and Commercial Use of TCE as a Processing Aid in Battery Separator Manufacturing

EPA proposed a 10-year exemption from prohibition under TSCA section 6(g)(1)(B) for the industrial and commercial use of TCE as a processing aid in battery separator manufacturing, for lead acid and lithium batteries. EPA is finalizing with modifications a time-limited exemption from prohibition for this specific condition of use of TCE. These modifications, based on information provided in public comments, include: (1) narrowing the exemption to apply only to use of TCE as a processing aid in manufacturing separators for lead acid batteries; (2) extending the time period of the exemption for lead acid batteries from ten to 20 years; and (3) allowing the disposal of wastewater containing TCE following lead acid and lithium battery separator manufacture under a separate TSCA section 6(d) phase-out for disposal of TCE to industrial pre-treatment, industrial treatment, or POTWs (see Unit III.C.4.). Separate from the modified 6(g) exemption, EPA is finalizing a 5-year phase-out under TSCA section 6(d) for use of TCE in manufacturing separators for lithium batteries.

As described in the proposed rule, based on information provided by commenters and other information reasonably available to the agency, EPA understands that separators are fundamental components in batteries that provide the necessary separation between the internal anode and cathode components that make batteries work, and that restrictions on the production of battery separators could critically impact the United States battery manufacturing supply chain and impede the expansion of domestic battery production capacity. EPA understands that battery separator manufacturing processes are highly engineered, and that the separators are specialty products designed precisely to meet stringent technical specifications that are essential in powering vehicles and systems in the United States' supply chain for multiple critical infrastructure sectors.

Based on information provided in public comments regarding specifications around the final battery separator product, such as the required thickness of the separator itself and the feasibility of substitute chemicals for TCE, EPA determined that battery separators for lead acid and lithium batteries should be treated separately. Thus, EPA is distinguishing between the industrial and commercial use of TCE as a processing aid in battery separator manufacture for each type of battery (lead acid or lithium (also referred to in comments as lithium-ion batteries)) and providing different exemption or phase-out timeframes for each type of battery separator manufacturing. More details are in this Unit.

a. Lithium Battery Separator Manufacturing

EPA is finalizing a prohibition on the manufacture (including import), processing, distribution in commerce, and industrial and commercial use of TCE as a processing aid for lithium battery separator manufacturing, which will come into effect 5 years after the publication date of this rule. In response to EPA's proposal to establish a 10-year TSCA section 6(g) exemption for the use of TCE in battery separatory manufacturing, EPA received substantiative public comments that described feasible alternatives to TCE in the manufacture of lithium battery separators, as well as information on why the two types of battery separator manufacturing should be treated as distinct.

One company uses TCE in the manufacture of lithium battery separators (Ref. 46). In their public comment, the company described how they could transition out of TCE within 5 years and retracted its request for an exemption under TSCA section 6(g) for lithium battery separators (Ref. 46). EPA is unaware of any other domestic manufacturer that uses TCE to produce lithium battery separators. In public comments on a separate rulemaking for methylene chloride under TSCA section 6, at least five commenters described their plans to construct manufacturing plants for lithium-ion battery separators, specifically for electric vehicles, that would use methylene chloride as a processing aid (Refs. 59, 60, 61, 62, 63, 64), rather than TCE. (The final rule under TSCA section 6(a) to address the unreasonable risk for the use of methylene chloride as a processing aid to continue with the implementation of a WCPP (40 CFR 751.109) (89 FR 39254, May 8, 2024 (FRL–8155–01–OCSPP)).

TSCA section 6(d) requires the Agency to establish compliance deadlines that are as soon as practicable. TSCA section 6(g) requires that any exemptions be adequately justified. For the final rule, the exemption under TSCA section 6(g) applies only to lead acid battery separator manufacturing, and the Agency is prohibiting manufacture, processing, and commercial use of TCE for the manufacture of lithium battery separators after the five years specified under TSCA section 6(d). During the time before prohibition, manufacturers and processors of TCE for use in the manufacture of lithium battery separators and the users of TCE in the manufacture of lithium battery separators are required to comply with the WCPP, as described in Units III.A., and IV.C.

b. Lead Acid Battery Separator Manufacturing

EPA is finalizing a 20-year TSCA section 6(g) exemption from prohibition for the manufacture (including import), processing, distribution in commerce, and industrial and commercial use of TCE as a processing aid for lead acid battery separator manufacturing. While EPA proposed a 10-year section 6(g) exemption for the use of TCE in battery separator manufacturing, in the primary alternative regulatory action in the proposed rule EPA presented a 15-year exemption from the prohibition on TCE for the industrial and commercial use of TCE as a processing aid for battery separator manufacturing. EPA received substantiative information in follow up meetings based on public comments that 20 years would be the minimum timeframe needed to transition to an alternative for manufacturing separators for lead-acid batteries (Refs. 34, 39, 64, 65). While EPA received comments that more than 20 years may be needed, for the reasons described in this Unit, EPA is finalizing the exemption for use of TCE in manufacture of lead acid battery separators at 20 years.

EPA emphasizes that alternatives to TCE in lithium battery separator manufacturing are not expected to be feasible substitutes for TCE in lead-acid battery manufacturing due to differences in the processes for each separator type. This is primarily due to the difference in thickness of the battery separators: lithium battery separators are typically only 9 to 10 microns thick, while lead-acid battery separators range from 6 to 50 times thicker than lithium battery separators. Given the chemistry of the alternative solvent reacting with the mineral oil and metal sheets that constitute the process of manufacturing a battery separator, it would therefore require between 225 to 625 times longer to physically extract lead acid separators compared to lithium separators using an alternative solvent. TCE is about 50% to 80% (depending

on temperature) more effective at extracting process oil during the battery separator manufacturing process than the alternative product used in the manufacturer's new lithium separator process (Ref. 64). Overall, while alternatives to TCE are suitable for lithium battery separator manufacturing and may be feasibly substituted in domestic manufacturing within five years, these alternatives are not feasible for lead acid battery separator manufacturing.

Numerous commenters submitted information on the use of TCE as a processing aid in lead-acid battery manufacturing. Industry commenters and trade associations involved in battery manufacture agreed that EPA correctly categorized battery separator manufacturing as critical and essential. In public comments, battery separator manufacturers described the need for the exemption to be extended to 25 years, citing the lack of a currently identified alternative and once identified, the time necessary for testing and recertification for any alternatives to TCE. As described by commenters, the steps for such a process include: identifying and/or developing an alternative chemical as a processing aid, sample trials, battery testing, second level battery testing, changing battery separator production lines, and testing and production approval processes from battery end users (*e.g.,* automobile manufacturers). This step-wise process is consistent with EPA's understanding of developing and implementing alternatives for other chemicals and uses. In follow-up conversations with battery separator manufactures, EPA gained further clarity that timeframes could be expedited somewhat, and on an expedited timeline would take 20 years (Ref. 64). Because TSCA section 6(g) requires that any exemptions be adequately-justified, in consideration of public input, and that the period of the exemption is reasonable, EPA is lengthening the proposed TSCA section 6(g) exemption from the prohibition for manufacture (including import), processing, distribution in commerce, and use of TCE in manufacturing separators for lead acid batteries from 10 years to 20 years (*i.e.,* to December 18, 2044.). EPA encourages manufacturers of battery separators to identify early in their substitution efforts if any further time would be needed.

2. Industrial and Commercial Use of TCE as a Processing Aid for Specialty Polymeric Microporous Sheet Materials

EPA is finalizing a 15-year TSCA section 6(g) exemption from prohibition for the manufacture (including import), processing, distribution in commerce, and industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet materials. While EPA proposed to prohibit industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet materials, EPA's primary alternative regulatory action described a 15-year TSCA section 6(g)(1)(A) exemption from prohibition for this use. EPA received substantiative information in public comments to support finalizing this exemption, as well as support for 15 years as the appropriate timeframe for this exemption (Ref. 40).

As noted in the initial exemption request and in the public comments submitted to EPA, specialty polymeric microporous sheet materials are fundamental components in the production of critical or essential products such as drivers' licenses, passports, and chemical drum labels (Refs. 66, 40). EPA agrees that TCE is a critical and essential component in the manufacturing process for these products. EPA also agrees that certain applications of these specialty polymeric microporous sheet materials are critical and essential uses for which no technically and economically feasible safer alternative is available. In public comments, the manufacturer of specialty polymeric microporous sheet materials disagreed with EPA's proposal to restrict the end uses of the specialty polymeric microporous sheet materials to critical and essential products, stating that all end products of the material use the same production line. EPA is finalizing with modifications a time-limited exemption from prohibition for this specific condition of use of TCE. These modifications, based on information provided in public comments, include: (1) modifying the exemption from the proposal to allow for this exempted use of TCE as a processing aid to apply broadly to any end product; (2) allowing the disposal of wastewater containing TCE associated with manufacture of specialty polymeric microporous sheet materials under a separate TSCA section 6(d) phase-out for disposal of TCE to industrial pre-treatment, industrial treatment, or POTWs (see Unit III.C.4.); and (3), in an effort to minimize worker exposure during the period of the exemption, EPA is requiring that the industrial and commercial use of TCE as a processing aid in the manufacture of specialty polymeric microporous sheet materials can only continue at existing facilities already using TCE to manufacture specialty polymeric microporous sheet materials. EPA expects that development of any new facilities for the manufacture of specialty polymeric microporous sheet materials could innovate new processes that do not include use of TCE.

3. Industrial and Commercial Use of TCE in Batch Vapor Degreasing for Essential Aerospace Parts and Components and Narrow Tubing Used in Medical Devices

EPA is finalizing the proposed primary alternative 7-year TSCA section 6(g)(1)(B) exemption from prohibition for industrial and commercial use of TCE in batch vapor degreasing for essential aerospace parts and components and 7-year TSCA section 6(g)(1)(A) exemption from prohibition for industrial and commercial use of TCE in batch vapor degreasing for narrow tubing used in medical devices. EPA received substantiative information in public comments to support the need for these exemptions. Based on the information received, EPA determined it is necessary to finalize these exemptions.

Numerous commenters urged EPA to finalize the alternative exemptions, citing strict safety and performance standards that TCE is currently used to meet and a recertification process that would take a longer timeframe than the 1 year that was proposed (Refs. 36, 43, 32, 56, 67, 43, 32, 56). Given that under this condition of use TCE is used to clean parts for highly specialized end uses in the aerospace and medical fields, commenters stressed that a significant length of time would be needed for safety recertification of an alternative. These commenters also described how all currently known potentially effective drop-in substitutes to TCE for this highly specialized use are also chemicals currently being evaluated or regulated by EPA under TSCA, and, as such, they do not view these substitutes as viable long-term alternatives to TCE. In many cases, according to commenters, the transition to a TCE substitute would require the transformation or complete replacement of complex equipment. One manufacturer indicated in their public comments that they had identified an alternative that could meet the cleanliness required for their end products; however, using this substitute chemical solvent would also require changing to a different machine type (*i.e.,* to vacuum vapor degreasers). According to that commenter, it would take seven years to install vacuum degreasers, implement the necessary infrastructure upgrades, obtain permits, notify customers, and validate existing

contracts (Ref. 36). EPA agrees that the significant amount of infrastructure and equipment changes needed to transition out of TCE for this specific vapor degreasing condition of use support finalizing a longer timeline until prohibition.

Regarding section 6(g) criteria, commenters agreed with EPA's characterization of TCE as being essential to meet unique cleanliness demands for narrow tubing used in medical devices as well as for aerospace parts. A public commenter noted the intensity of these safety concerns particularly in medical tubing, noting that in implanted devices ''manufacturing residues may 'pose an inflammatory or autoimmune trigger risk' that can lead to death'' (Ref. 36). For these reasons, EPA is finalizing a time-limited exemption under TSCA section 6(g)(1)(A) for seven years for the industrial and commercial use of TCE in batch vapor degreasing for narrow tubing used in medical devices, and a time-limited exemption under TSCA section 6(g)(1)(B) for seven years for the industrial and commercial use of TCE in batch vapor degreasing for essential aerospace parts.

4. Industrial and Commercial Use in Closed-Loop Batch Vapor Degreasing Necessary for Rocket Engine Cleaning by Federal Agencies and Their Contractors

EPA proposed a 7-year TSCA section 6(g)(1)(B) exemption from the prohibition on the industrial and commercial use of TCE as a solvent in closed-loop vapor degreasing necessary for human-rated rocket engine cleaning by NASA and its contractors, and the manufacture (including import), processing, and distribution in commerce of TCE for this use. EPA is finalizing with modifications the time-limited exemption from prohibition for this specific condition of use of TCE. EPA received information that this exemption should include all Federal agencies, rather than just NASA, due to Federal agencies having similar critical infrastructure and national security needs of rocket engines. Due to the commonality of the United States' rocket engine industrial base, other Federal agencies like NASA use TCE in the same condition of use to support their rocket engine cleaning. EPA has made this change and is finalizing a time-limited exemption under TSCA section 6(g)(1)(B) for industrial and commercial use of TCE as a solvent in closed-loop batch vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors.

C. Changes to Compliance Dates for Prohibitions Under TSCA Section 6(d)

EPA proposed a compliance timeframe of 1 year for the prohibitions on industrial and commercial use of TCE and requested public comments on the appropriateness of this timeline for specific conditions of use. This unit describes modifications EPA made to proposed timeframes for prohibitions under TSCA section 6(d) for the two conditions of use for which EPA is finalizing different timeframes for prohibition. (Changes to timeframes for proposed TSCA section 6(g) exemptions or modifications of a section 6(g) exemption to a section 6(d) timeframe are described in Unit III.B.). Given that the part of the rule affecting the most significant volume of TCE is unchanged between proposal and final, the overall impact of these changes is expected to be minor.

1. Industrial and Commercial Use of TCE in Energized Electrical Cleaner

As described in this Unit, EPA is finalizing a prohibition in three years for the industrial and commercial use of TCE in energized electrical cleaner rather than the prohibition within 1 year as proposed for this condition of use. EPA notes that energized electrical cleaner is a sub-use of the industrial and commercial use of TCE as solvent for aerosol spray degreaser/cleaner. During the timeframe before prohibition, EPA is finalizing requirements to comply with *either* specific prescriptive controls *or* the WCPP for the industrial and commercial use of TCE in energized electrical cleaner, which is a sub-use of the industrial and commercial use of TCE as solvent for aerosol spray degreaser/cleaner, as described in Unit IV.D.1.

In the proposed rule, EPA solicited comment on whether some activities would need longer compliance timeframes in order to appropriately transition, and specifically mentioned uses such as energized electrical cleaning, where TCE may be desired due to its low flammability. EPA also requested comment on the feasibility and appropriateness of the WCPP. EPA subsequently received several comments expressing concern over the proposed prohibition on TCE in energized electrical cleaner (Refs. 51, 68). In addition to describing the need for additional time to transition to alternatives to TCE in energized electrical cleaner, commenters described the work practices and context that support the potential for exposure reduction to TCE through workplace controls, including, but not limited to, the WCPP. For example, one commenter described how energized electrical cleaners are typically used only by professionals for specialized uses in which strict workplace controls already exist (Ref. 51). As another example, in a separate rulemaking under TSCA section 6 for PCE (RIN 2070–AK84), one commenter described work practices and controls for use of energized electrical cleaners, stating that facilities that require cleaning of energized equipment rely on skilled technicians or other professional users who typically have education and training that may include two years at lineman school, time as an apprentice, licensing or certifications, and continuing education (Ref. 69). The commenter also stated that OSHA General Industry and Construction standards include requirements specific to electrical work under 29 CFR part 1926, subparts E, K, and V. Commenters differed on whether the WCPP or other workplace controls would be most suitable. Several commenters stated that the WCPP would be impractical for use of TCE in energized electrical cleaner because trained technicians often travel to different facilities to conduct work, including facilities that may not otherwise use a chemical for which the WCPP is required, and suggested that instead of a WCPP, a training and certification program would be sufficient to address the unreasonable risk (Refs. 51, 68).

Based on the information submitted to EPA as part of the comment period regarding this condition of use, supported by subsequent discussions for clarification, and in consideration of existing best practices and regulations for work in electrical spaces as well as the need for additional time to certify and transition to substitutes, EPA is finalizing a prohibition on the use of TCE in energized electrical cleaner after December 18, 2027. In addition, EPA has determined that either the WCPP or specific prescriptive controls specified in the final rule, including dermal PPE and respiratory protection, are necessary and appropriate for reducing exposures to potentially exposed persons until the prohibition takes effect.

EPA notes the importance of existing OSHA regulations designed to protect workers exposed to dangers such as electric shock, electrocution, fires, and explosions. Specifically, in addition to the requirements for electrical work under OSHA General Industry and Construction standards at 29 CFR part 1926, subparts E, K, and V that one commenter mentioned in their public comment, OSHA regulates electrical work under Occupational Safety and

Health standards at 29 CFR part 1910. For example, OSHA requires safety-related work practices on electrical equipment under the Electrical Standard at 29 CFR part 1910, subpart S (29 CFR 1910.301 to 1910.399), which was significantly updated in 2007 (72 FR 7136, February 14, 2007). OSHA also sets forth requirements for the operation and maintenance of electrical power generation, control, transformation, transmission, and distribution lines and equipment under the Electric Power Generation, Transmission, and Distribution standard at 29 CFR 1910.269, which was significantly updated in 2014 (79 FR 20316, April 11, 2014). Additionally, OSHA regulates electrical protective equipment under the Electrical Protective Equipment standard at 29 CFR part 1910, subpart I (29 CFR 1910.137), which was significantly updated in 2014 (79 FR 20316, April 11, 2014). Other standards and best practices apply to electrical safety in the workplace, for example the National Fire Protection Association (NFPA) 70E Standard for Electrical Safety in the Workplace (Ref. 70).

As discussed in the proposed rule, given the risk profile of TCE, EPA determined that it is necessary to require worker protection measures such as the WCPP for those conditions of use that will continue beyond 1 year. In view of the relatively short timeframe for transitioning to an alternative, combined with the specialized nature of this use of TCE and the existing OSHA regulations and other best practices for performing work on energized equipment, EPA recognizes that the WCPP may not be the best approach to addressing occupational exposures in the interim. EPA understands that trained technicians performing this activity often travel to different facilities to conduct their work, including facilities that may not otherwise use TCE. EPA also determined that owners and operators who perform this kind of work should focus their efforts on transitioning to alternatives, rather than setting up comprehensive exposure control plans and programs. EPA is therefore providing an alternative to the WCPP in the form of prescriptive controls, including respiratory and dermal protection to protect workers in the interim. Considering all of these factors, as well as the workplace requirements for energized electrical cleaner in the final regulation of PCE under TSCA section 6 (RIN 2070–AK84) and the burdens associated with higher APF respirators, EPA has determined that the use of respirators with an APF of 50 or greater and impermeable gloves will minimize the exposure to the potentially exposed persons engaged in this use of TCE during the interim period before the prohibition takes effect, as further described in Unit IV.D. In addition, requiring PPE similar to that required by the PCE regulation is expected to ease the transition to PCE, which is a possible replacement for TCE in these products. The upstream manufacturing and processing of TCE for the use in energized electrical cleaner will be subject to the WCPP as described in Unit IV.C. until the use is prohibited.

EPA emphasizes that other industrial and commercial use of TCE as a solvent for aerosol spray degreasers/cleaners is prohibited in the final rule, consistent with the proposal for that condition of use.

2. Industrial and Commercial Use in Adhesives and Sealants for Aerospace Applications

EPA is finalizing a prohibition in five years for the industrial and commercial use of TCE in adhesives and sealants for aerospace applications. EPA proposed a compliance timeframe of 1 year for the prohibitions on industrial and commercial use, and in public comments requested feedback on the appropriateness of this timeline for specific applications. EPA received public comments highlighting that the industrial and commercial use of TCE in adhesives and sealants specifically for aerospace applications has safety implications and involves longer recertification timelines (Ref. 56). EPA's rationale for the short timeframe until prohibition for this condition of use was based on the understanding that alternative formulations or products exist that do not contain TCE. During the public comment period, EPA received public comments highlighting the safety considerations for industrial and commercial use of TCE in adhesives and sealants specifically for aerospace applications and longer recertification timelines. A public commenter stated that TCE is still critically necessary in adhesives and sealants; particularly in aircraft pneumatic deicing boots; in solvent bonding of plastic components, including on Oxygen Container Assemblies for Passenger Service Unit products used in aircraft; and as an adhesive or sealant for flight-critical equipment on new and existing aircraft, both commercial and military (Ref. 56). Regarding compliance timeframes, this commenter requested that adhesives and sealants for aerospace be allowed to continue in perpetuity under a WCPP. EPA has determined that prohibition of this use is necessary to address the unreasonable risk. EPA did consider the information raised by this commenter in determining an appropriate timeframe for the prohibition on use of TCE in adhesives and sealants for aerospace applications. Specifically, the commenter provided information that for uses in the aerospace and defense sector, changes in response to a prohibition on TCE would be a multiyear process that requires redesign and recertification that a product meets performance standards such as customers' technical requirements, UL and Conformité Européenne (CE) marking requirements, military specifications, and specifications from other government agencies such as the Federal Aviation Administration and NASA (Ref. 56).

EPA recognizes that the recertification process for uses in aerospace applications is lengthy and agrees that one year is not a sufficient timeframe. In identifying a reasonable timeframe, EPA considered public comments on the proposed rulemaking and follow-up clarifying conversations with commenters, as well as information submitted during the public comment period on EPA's proposed rule under TSCA section 6 for methylene chloride (88 FR 28284, May 3, 2023 (FRL–8155–02–OCSPP)) regarding anticipated timeframes to recertify adhesives and sealants used in the aerospace field. As such, EPA has determined that a 5-year timeframe until prohibition for the industrial and commercial use of TCE in adhesives and sealants for aerospace applications is appropriate and will be sufficient to allow for a reasonable transition from TCE. During this time, EPA is requiring compliance with the WCPP, as detailed in Unit IV.C. The issuance of this final rule does not preclude these users from presenting additional information to EPA on their redesign and recertification progress in the future.

3. Industrial and Commercial Use of TCE in Laboratory Use for Asphalt Testing and Recovery

EPA is finalizing a phase-out of ten years for the industrial and commercial use of TCE in laboratory use for asphalt testing and recovery, with a prohibition on use of TCE in manual centrifuge processes at 5 years. In the proposed rule, EPA proposed to prohibit the laboratory use of TCE (which falls within the condition of use ''Industrial and commercial use of TCE in hoof polish; gun scrubber; pepper spray; and other miscellaneous industrial and commercial uses'') within 1 year. EPA proposed a TSCA section 6(g)(1)(A) exemption from prohibition for the

industrial and commercial use of TCE in laboratory use for essential laboratory activities that are critical (*e.g.,* occupational sampling and monitoring, the support of environmental cleanup activities, wax removal from NASA infrared sensors, and equipment calibration related to the search for chlorinated hydrocarbons on Mars; for a full list of critical activities see Unit V.A.3.a.iii. of the 2023 TCE proposed rule). In the 2023 TCE proposed rule, EPA specifically noted that the use of TCE in laboratory settings for testing asphalt would not be included in the TSCA section 6(g) exemption due to information available to EPA that indicated it was not critical nor essential, and because alternative testing methods exist, including the Nuclear Asphalt Content Gauge and the Ignition Method.

During the public comment period, EPA received numerous comments providing new information on the importance of TCE in asphalt testing and recovery as a laboratory use, and the challenges of using a substitute that had appeared theoretically feasible. Many commenters, including several state departments of transportation, emphasized to EPA that 23 state specifications require TCE to be used for solvent extraction for asphalt testing accuracy (Refs. 55, 57, 58, 71, 72, 73, 74, 75, 76, 77). Commenters described how this use of TCE is critical or essential; specifically, numerous commenters emphasized that in the current landscape for asphalt testing and recycling, TCE is widely used at this time because it can be easily recovered and the asphalt test sample can then be reused rather than discarded. Further, as commenters described, using TCE in laboratory testing allows departments of transportation to recycle asphalt paving and shingles into new asphalt by determining how much asphalt binder is present. The ability to determine the amount of remaining asphalt binder has resulted in, according to commenters, asphalt being one of the most recycled materials. The Nuclear Asphalt Content Gauge that EPA had identified as an alternative in the proposed rule does not allow for asphalt recycling, as it destroys the asphalt sample during the test which makes it impossible to test the asphalt binder as well.

In consideration of public comments, EPA has determined that a prohibition after 1 year is not reasonable. States are currently invested heavily in extraction equipment that uses TCE and EPA agrees with commenters who stated that transitioning from TCE would take years and incur significant costs as a result of equipment changes. Commenters expressed an interest in ceasing their use of TCE and requested between 5 years and 20 years until prohibition of this use of TCE in order to facilitate a transition away from TCE. In determining a reasonable timeframe for a phase-out, EPA considered significant information provided in public comments about the potential alternatives to TCE in laboratory asphalt testing that would allow for testing as well as recovery. While alternatives have already been identified, fully implementing use of those substitutes would require the complete retrofit of existing laboratory equipment. Additionally, numerous state departments of transportation standards would need to be updated, which would take time.

EPA does not view the 50-year timeframe proposed (and finalized) for the exemption for laboratory use of TCE for essential laboratory uses as appropriate for use of TCE in asphalt testing and recovery, so is not finalizing the laboratory asphalt testing and recovery use as part of the TSCA section 6(g) exemption for essential laboratory activities. Based on public comments and discussions with the U.S. Department of Transportation, EPA has determined that 10 years is a reasonable timeframe until the prohibition on TCE use in laboratory use for asphalt testing and recovery and is finalizing an extended phase-out of ten years for the industrial and commercial use of TCE in laboratory use for asphalt testing and recovery. Associated with this phase-out, EPA will require the establishment of the TCE WCPP, outlined in Unit IV.C. within 180 days after publication of the final rule, as workplace protections during the period of the phase-out. Additionally, EPA has identified asphalt testing and recovery conducted through manual centrifuge methods as specific activities that would be prohibited within five years as part of the phase-out, due to the higher level of worker exposure from this activity and information received from commenters about automated alternatives.

In public comments, numerous users of TCE for asphalt testing and recovery provided information to EPA regarding technological advances in this sector—namely the transition from manual centrifuge methods of testing to automated machines (Refs. 71, 72, 57). Many laboratories have invested in automated extraction machines. These machines are expensive and currently are calibrated to be chemical-specific, with TCE-calibrated machines unable to use a different or replacement solvent, such as PCE (Refs. 71, 72, 55). EPA's identification of a 10-year timeframe for prohibition is partly based on the time it would take to replace or retrofit the current laboratory practices with non-TCE automatic extraction machines.

Based on public comments, EPA understands that the industry favors automated extraction machines due to the extremely high worker exposures inherent with manual centrifuge processes. Commenters describe manual centrifuge processes as resulting in worker exposure to TCE for the entire task duration, with constant handling of the solvent by stirring, repouring, straining, and vaporizing it at times (Ref. 71). EPA agrees with commenters on the high risk of asphalt testing and recovery using TCE in manual methods. As such, as part of the phase-out, any lab use of TCE for asphalt testing or recovery which uses manual centrifuge processes is prohibited in 5 years. Between 5 and 10 years, labs must either use TCE in automated machines only, or use alternative solvents in automated machines or manual centrifuge processes (such as methylene chloride or PCE, for which EPA has finalized provisions requiring chemical specific WCPPs). Therefore, EPA is finalizing an extended phase-out of ten years for the industrial and commercial use of TCE in laboratory use for asphalt testing and recovery, with a prohibition on use of TCE in manual centrifuge processes at 5 years, rather than the prohibition within 1 year as proposed for all other industrial and commercial uses without extended phase-outs or exemptions.

4. Disposal of TCE to Industrial Pre-Treatment, Industrial Treatment, and POTWs

For disposal of TCE to industrial pre-treatment, industrial treatment, and POTWs, EPA is finalizing a phase-out over 20 years. In the proposed rule, EPA proposed to prohibit the disposal of TCE to industrial pre-treatment, industrial treatment, and POTWs in 1 year after the rule finalization. In the proposal, EPA requested comment on whether the prohibition timeframes and compliance dates were appropriate. In public comments, EPA received substantive information from several industrial and commercial users of TCE as a processing aid that wastewater disposal should continue on a timeframe to facilitate those uses.

Commenters manufacturing battery separators provided details on why the industrial and commercial use of TCE in battery separator manufacturing necessitates the disposal of wastewater containing TCE (Refs. 46, 34). As described by commenters, in battery separator manufacturing, TCE enters the

wastewater stream following contact between cooling tower blowdown, processes involving TCE, and water generated from the plant's steam distillation process, which is a key process step in battery separator manufacture. Water used in these processes becomes wastewater containing TCE. These manufacturers perform on-site treatment of this wastewater through air stripping and carbon absorption. The pre-treated water is then either recycled and reused in the process or discharged to a POTW. Wastewater discharges by battery separator manufacturers are regulated under existing wastewater discharge permits and have limits for volatile organic compounds such as TCE. EPA agrees with commenters assertions that TCE wastewater is inherently leftover as part of the process and agrees that no other form of disposal is acceptable. Given that the generation of wastewater containing TCE cannot be avoided as it results from an intrinsic component of battery separator manufacture, and EPA's determination that use of TCE in battery separator manufacture is either a critical and essential function for which there is no technically or economically feasible safer alternative (in the case of lead acid batteries) or for which five years before prohibition is as soon as practicable (in the case of lithium batteries), EPA is modifying the associated timelines for the prohibition on disposal for these uses, with worker protections, to continue disposal of wastewater containing TCE that is a necessary part of this process.

Based on public comments, EPA also finds that disposal of wastewater is a necessary part of the use of TCE as a processing aid in the manufacture of specialty polymeric microporous sheet materials. Like the battery separator manufacturers, comments submitted from the specialty polymeric microporous sheet materials manufacturer explained that TCE enters the facility wastewater that is generated in cooling tower blowdown water and subsequently discharged to a POTW (Ref. 40). Wastewater discharges are regulated under existing wastewater discharge permits and have limits for volatile organic compounds such as TCE. Given the determination of the critical and essential need for the longer timeframes for this industrial and commercial use, EPA is modifying the TSCA section 6(d) phaseout for disposal of TCE for this use to allow disposal of wastewater containing TCE that is a necessary part of this process.

As such, the disposal of TCE to industrial pre-treatment, industrial treatment, and POTWs is prohibited with the following phase-out structure. For the majority of industrial and commercial uses, such disposal is prohibited at one year. For industrial and commercial users of TCE as a processing aid in lithium battery separator manufacturing, such disposal is prohibited at 5 years. For industrial and commercial users of TCE as a processing aid in specialty polymeric microporous sheet materials manufacturing, such disposal is prohibited after 15 years. For industrial and commercial users of TCE as a processing aid in lead-acid battery separator manufacturing, such disposal is prohibited after 20 years. Industrial and commercial users who are allowed to continue disposing of TCE to wastewater for more than one year must follow the WCPP provisions as laid out in Unit IV.C, and POTWs receiving wastewater must follow the wastewater worker protection provisions discussed in Unit IV.E.3.

5. Industrial and Commercial Use of TCE for Batch Vapor Degreasing for Land-Based DoD Defense Systems by Federal Agencies and Their Contractors

EPA is finalizing a prohibition in five years for the industrial and commercial use of TCE in batch vapor degreasing for land-based DoD defense systems by Federal agencies and their contractors. EPA proposed a compliance timeframe of one year for the prohibitions on industrial and commercial use of TCE in vapor degreasing. EPA received information indicating that this use needs to continue for a longer period of time due to the national security implications of the end products, and the need for a reasonable transition period for that use that is as soon as practicable but longer than the one year proposed. TCE vapor degreasing is necessary due to technical challenges with other substitute chemicals or alternative methods. The cleanliness standards of certain parts as required by DOD specifications or other specifications included in existing contracts within the supply chain currently require TCE. A reasonable transition period for this technically challenging use requires substantial investment and time to develop viable alternatives, because conversion from vapor degreasing to other methods of cleaning is a capital-intensive investment that would require several years to plan, permit, construct, and install. TCE has been used in vapor degreasing to meet required levels of cleanliness of certain supplied parts by long-standing design specifications that are incorporated into contracts of a complex supply chain. As such, the industrial and commercial use of TCE for batch vapor degreasing for land-based DoD defense systems is prohibited after 5 years, rather than at 1 year with vapor degreasing for other purposes.

D. Other Changes

1. Regulatory Threshold

In the 2023 TCE proposed rule, EPA requested comment on whether the Agency should consider a de minimis threshold of TCE in formulations when finalizing prohibitions, and, if so, what threshold should be considered. EPA received comments in support of the inclusion of a de minimis threshold, as well as comments opposing such a threshold. Of the supportive commenters, many agreed with the EPA request for comment on using 0.1% by weight as the threshold for the applicability of prohibitions and restrictions on TCE (Refs. 53, 78, 51), which EPA is referring to in this final rule as a regulatory threshold. Commenters provided a variety of reasons in support of a regulatory threshold, such as the difficulty of proving the absence of a chemical (Refs. 38, 79) and the importance of providing for very small amounts of a chemical that cannot be reasonably eliminated (Ref. 37). Commenters observed that TCE is unintentionally manufactured as a byproduct in small amounts in the manufacture of chlorinated organics and noted that this cannot be prevented in the production process (Ref. 39). In some cases, commenters noted that a 0.1% threshold would be consistent with the requirements under the OSHA Hazard Communication Standard at 29 CFR 1910.1200 (Refs. 78, 51). One of these commenters observed that, because levels below 0.1% are not required to be reported on Safety Data Sheets (SDSs) under the OSHA Standard, there is likely to be a lack of awareness of products that contain TCE below this level.

To aid the regulated community with implementing the prohibitions on TCE and to account for TCE as a byproduct or impurity in products, EPA is establishing a regulatory threshold of 0.1% for TCE, indicating that TCE at concentrations less than 0.1% by weight are not subject to the prohibitions and restrictions outlined in this rulemaking. EPA views the regulatory threshold as an appropriate policy approach necessary to aid in the rule implementation and to clarify which products are subject to the final rule. As defined in 40 CFR 751.5, ''product'' means ''the chemical substance, a mixture containing the chemical

substance, or any object that contains the chemical substance or mixture containing the chemical substance that is not an article.''

This 0.1% regulatory threshold for TCE is in alignment with Appendix A of 29 CFR 1910.1200 Health Hazard Criteria developed by OSHA; OSHA described this threshold in the 2012 modifications to the hazard communication standard: ''When data on the mixture as a whole are not available, the mixture is considered to present the same health hazards as any ingredients present at a concentration of 1% or greater, or, in the case of carcinogens, concentrations of 0.1% or greater. The current HCS [hazard communication standard] also recognizes that risk may remain at concentrations below these cut-offs, and where there is evidence that that is the case, the mixtures are considered hazardous under the standard.'' (89 FR 44144, May 20, 2024). Under 29 CFR 1910.1200, a health hazard is defined as ''a chemical which is classified as posing one of the following hazardous effects: acute toxicity (any route of exposure); skin corrosion or irritation; serious eye damage or eye irritation; respiratory or skin sensitization; germ cell mutagenicity; carcinogenicity; reproductive toxicity; specific target organ toxicity (single or repeated exposure); or aspiration hazard.'' The criteria for determining whether a chemical is classified as a health hazard are detailed in Appendix A to 29 CFR 1910.1200—Health Hazard Criteria. Appendix A.6.3.1 and A.7.3.1.1 of 29 CFR 1910.1200 indicate that a mixture must be classified as a carcinogen or a reproductive toxicant, respectively, if it includes greater than or equal to 0.1% of a substance that, like TCE, is classified as a carcinogen or a reproductive toxicant. Other EPA programs, such as the Toxics Release Inventory (TRI) program, have adopted the OSHA threshold of 0.1% for chemicals which are defined as carcinogens or as a potential carcinogen under the National Toxicology Program, International Agency for Research on Cancer, or OSHA (see 40 CFR 372.38(a)).

EPA is finalizing a regulatory threshold of 0.1% so that products containing TCE at concentrations less than 0.1% by weight are not subject to the prohibitions and restrictions of this final rule. EPA is finalizing this threshold for many of the reasons stated by commenters, such as the difficulty of proving the absence of a chemical (and the resulting uncertainty in various supply chains), the fact that the manufacture of chlorinated organics results in the unintentional manufacture of small amounts of TCE (and other chlorinated compounds) as a byproduct that becomes an impurity that is not feasible to remove, and the fact that it would be consistent with the OSHA Hazard Communication Standard and other programs to which industry has already calibrated its processes. EPA believes that adopting a regulatory threshold of 0.1% for TCE, which is a carcinogen and a reproductive toxicant, will increase regulatory certainty and ease implementation of the eventual prohibition of this chemical. This regulatory threshold is well below the concentration used for any products that contributed to the unreasonable risk. By prohibiting TCE concentrations of 0.1% or greater in products, EPA prevents any functional uses of TCE, which generally rely on a higher concentration of the chemical in order to make use of TCE's chemical properties. The manufacture (including import), processing, and distribution in commerce of products that contain TCE at concentrations equal to or above the regulatory threshold of 0.1% are still subject to the prohibitions and restrictions of this final rule, regardless of the concentration of TCE in the end product.

2. Processing of TCE Manufactured as a Byproduct

In the 2023 TCE proposed rule, EPA noted that TCE that is manufactured as a byproduct (such as during the manufacture of other chemicals, *e.g.,* 1,2-dichloroethane (1,2–DCA)) is not considered to be within the condition of use of TCE manufacturing. EPA has not changed this determination. However, in the 2023 TCE proposed rule, EPA did consider processing (including reuse) of TCE that was manufactured as a byproduct to be under the processing as a reactant/intermediate condition of use of TCE. Specifically, in Unit III.B.1.b.i. of the 2023 TCE proposed rule (''processing as a reactant/intermediate''), EPA noted that ''this condition of use includes reuse of byproduct or residual TCE as a reactant.'' EPA received numerous public comments on how the proposed rule addressed TCE as a byproduct that was then processed, with several commenters providing detailed information on how TCE is unintentionally manufactured as a byproduct during complex chemical processing streams and then processed and re-processed within those streams alongside other, similar chemicals (Refs. 42, 80, 39, 81, and 56). For clarity, EPA is using the terms reuse, recycling, and re-processing within this section as specifically used by commenters to refer to actions that occur under the larger condition of use of ''processing.'' One commenter pointed out that without excluding from the prohibitions any subsequent processing of TCE manufactured as a byproduct, chemical facilities would experience significant disruptions when trying to isolate and remove the TCE that was unintentionally manufactured, and that would otherwise be processed and consumed (Ref. 43). This commenter also emphasized the anticipated negative waste and upstream production impacts from a prohibition on the reuse of TCE manufactured as a byproduct, and highlighted how TCE is produced in the 1,2–DCA manufacturing process and how it is processed and recycled in the reactor manufacturing process for PCE and carbon tetrachloride (CTC). This commenter highlighted that if TCE byproduct processing was prohibited, this would significantly increase the quantity of hazardous waste disposed of and increase the use of virgin raw material in chemical manufacturing (Ref. 43). The commenter also provided a description of controls in place at chlorinated organic facilities to mitigate risk associated with TCE byproduct creation and recycling as well as citations to communications with EPA regarding these processes (Ref. 43).

As described in more detail in the Response to Comments document (Ref. 11), EPA agrees with commenters that TCE manufactured as a byproduct should logically be able to be processed, including recycled, during or concurrent with the processing of the intended manufactured chemical substance(s) so long as the TCE is processed in a site-limited, physically enclosed system within the same reaction process. EPA also recognizes the significant risks to workplace safety if all facilities manufacturing TCE as a byproduct had to distill, remove, and destroy all traces of TCE before further chemical processing could commence. For this reason, EPA is excluding from this rule the processing of TCE as a byproduct when that byproduct TCE is processed within a site-limited, physically enclosed system that is part of the same overall manufacturing process from which the byproduct substance was generated. In this rule, EPA is incorporating the definition of ''site-limited'' in 40 CFR 711.3 and also aligning with the description of site-limited, physically enclosed systems in 40 CFR 711.10(d)(1), which identifies activities for which reporting on certain byproducts is not required under the CDR Rule.

In proposing the CDR definition, EPA described enclosed systems for the purposes of CDR as system of

equipment directly connected to the production process that is designed, constructed, and operated in a manner which prevents emissions, or the release of any chemical substance into the facility or environment during the production process. (84 FR 17692, April 25, 2019) (FRL–9982–16). Such emissions, including fugitive emissions, could lead to exposures to workers, the public, or the environment. For an enclosed system, exposure and release could only occur due to loss of integrity or failure of the manufacturing process equipment or control systems. To meet the EPA enclosed system scenario, any equipment that the byproduct is present in at any point during the process sequence, such as tanks, reaction vessels, reactors, processing units (*e.g.,* a drum filter), and/or connecting lines, must: (1) Be of high structural integrity and contained on all sides, (2) pose no foreseeable potential for escape of constituents to the facility or environment during normal use, and (3) be connected directly by pipeline or similarly enclosed device to a production process. Also, any transfers or holding steps occurring in this system must be necessary to the recycle process and must take place within physically enclosed equipment that meet the enclosed system scenario. For example, hard piping or completely sealed (*i.e.,* welded) equipment would meet these criteria if connected directly to other enclosed equipment, preventing potential releases including fugitive emissions.

EPA is finalizing an exclusion from this rule for TCE manufactured and then processed as a byproduct in a site-limited, physically enclosed system that is part of the same overall manufacturing process from which the byproduct TCE was generated. EPA plans to interpret the exclusion for processing byproduct TCE in this rule in a similar way as the exemption for certain byproducts from CDR.

EPA recognizes the concerns that other commenters raised regarding potential risks from TCE manufactured as a byproduct; several commenters stated that rather than expand exclusions for TCE manufactured as a byproduct, EPA should evaluate all aspects of manufacture of a chemical substance and that byproducts could pose a risk to fenceline communities (Refs. 44, 30). As described in the proposed rule, EPA is including the evaluation of TCE manufactured as a byproduct during the manufacture of 1,2–DCA in the risk evaluation for 1,2–DCA. Additionally, unless it is for the purposes of disposal (see Unit IV.C.1.d.), TCE that exits the site-limited, physically enclosed systems in which it was manufactured by removal from the system, by relocation, or by conclusion of the manufacturing process is subject to the restrictions, prohibitions, and other provisions of this final rule. EPA notes that for the manufacturing of two chemicals, PCE and CTC, which may produce TCE as a byproduct within site-limited, physically enclosed systems, EPA is requiring a WCPP for PCE or CTC, which would provide a level of protection from TCE for potentially exposed persons while addressing the unreasonable risk from PCE or CTC.

EPA received additional information from a chemical manufacturer (Ref. 82) that manufactures TCE as a byproduct during other processes and then sends the TCE offsite for RCRA hazardous waste disposal. EPA notes that in the Risk Evaluation for TCE, EPA explained that it had tailored the scope of the risk evaluation to exclude the disposal pathway of TCE, except for limited disposal of TCE-containing wastewater discussed in Unit IV.B.6. Thus, the disposal of TCE and the processing and distribution in commerce for such disposal is out of scope for this rule unless otherwise specified. EPA understands that some facilities, such as those that produce substances critical to the battery supply chain, may manufacture TCE as a byproduct and that TCE is not further processed onsite but rather is disposed of offsite. Such activity is not covered by this rule.

3. Industrial and Commercial Use of TCE as a Solvent for Closed-Loop Batch Vapor Degreasing for Rayon Fabric Scouring for Rocket Booster Nozzle Production for Federal Agencies and Their Contractors

In the 2023 TCE proposed rule, EPA included several longer timeframes for TCE uses specifically to foster and support Federal Agencies' missions related to national security and critical infrastructure. EPA received public comment on one of these conditions of use and provisions that relate to compliance. The comment relates to the phase-out of TCE in industrial and commercial use as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for rocket booster nozzle production. EPA proposed that within 5 years of the publication date of the final rule the Federal agency that is the end user of the rayon fabric for rocket booster nozzle production (*e.g.,* the U.S. Department of Defense (DOD) or NASA) would need to conduct a final pre-launch test of rocket boosters without using TCE. By 10 years from the publication date of the final rule, the phase-out would be complete and industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing would be prohibited. A commenter brought to EPA's attention that although EPA proposed to require the testing of an alternative process, the proposed regulation did not include a requirement to switch to an alternative once a suitable one was fully validated (Ref. 44). As the commenter noted, such a requirement is necessary to prompt users to discover and implement effective and safer alternatives to TCE. EPA agrees, as the intention of this phase-out and the 5-year testing requirement is to incentivize TCE users to transition away as fast as practicable. Based on this public comment, EPA has modified the regulatory text to require use of the tested alternative if it proves to be an adequate substitute.

4. Definitions

EPA proposed to add definitions for ''Authorized person,'' ''ECEL,'' ''Exposure group,'' ''Owner or operator,'' ''Potentially exposed person,'' ''Regulated area,'' and ''Retailer'' to 40 CFR part 751, subpart A. The final rule under TSCA section 6 to address the unreasonable risk presented by methylene chloride (89 FR 39254, May 8, 2024 (FRL–8155–01–OCSPP)) added the definitions for ''Authorized person,'' ''Owner or operator,'' ''Potentially exposed person,'' ''Regulated area,'' and ''Retailer'' to subpart A. The final rule under TSCA section 6 to address the unreasonable risk presented by PCE (RIN 2070–AK84) added the definition for ''Exposure group'' and ''ECEL'' to subpart A.

In this final rule, EPA is adding a definition for ''interim ECEL'' to subpart D to incorporate the interim ECEL value discussed in Unit III.A.1. and to make it clear that the interim ECEL is only applicable during the phaseout and TSCA section 6(g) exemption periods. EPA has also revised the proposed subpart D definition of ''ECEL action level'' to refer to an ''interim ECEL action level'' and to incorporate the interim ECEL action level value described in Unit III.A.1.

Lastly, to provide additional clarity, EPA has revised its proposed descriptions in the preamble of industrial and commercial use of TCE as solvent for open-top or closed-loop batch vapor degreasing for essential aerospace parts and for narrow tubing for medical devices. The revised descriptions appear in Unit IV.B.1.

IV. Provisions of the Final Rule

EPA intends that each provision of this rulemaking be severable. In the event of litigation staying, remanding, or invalidating EPA's risk management approach for one or more conditions of use in this rule, EPA intends to preserve the risk management approaches in the rule for all other conditions of use to the fullest extent possible. The Agency evaluated the risk management options in TSCA section 6(a)(1) through (7) for each condition of use and generally EPA's regulation of one condition of use to address its contribution to the unreasonable risk from TCE functions independently from EPA's regulation of other conditions of use, which may have different characteristics leading to EPA's risk management decisions. Further, the Agency crafted this rule so that different risk management approaches are reflected in different provisions or elements of the rule that are capable of operating independently. Accordingly, the Agency has organized the rule so that if any provision or element of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid.

There are many permutations of this. For example, as discussed in Unit IV.B., this final rule prohibits industrial and commercial use of adhesives and sealants that contain TCE (with subsets of this use with a delayed compliance date as described in Unit IV.B.2. or an exemption as described in Unit IV.G.). This final rule also prohibits all consumer uses of TCE as discussed in Unit IV.B.1. To the extent that a court were to find that EPA lacked substantial evidence to support its prohibition of adhesives and sealants or otherwise found legal issues with EPA's approach to that condition of use, it would have no bearing on other similarly situated conditions of use, such as those involving consumer use of TCE, unless the specific issue also applies to the particular facts associated with consumer use. This is reflected in the structure of the rule, which describes the specific prohibitions separately by compliance date. EPA also intends all TSCA section 6(a) risk management elements in this rule to be severable from each TSCA section 6(g) exemption. EPA has the authority to promulgate TSCA section 6(g) exemptions ''as part of a rule promulgated under [TSCA section 6(a)].'' However, EPA's risk management decisions under TSCA sections 6(a) and 6(c) are independent from EPA's consideration of whether it is appropriate, based on the factors in TSCA section 6(g), to exempt specific conditions of use from the requirements of the TSCA section 6(a) risk management elements in the rule. In other words, EPA first decides whether and how to regulate each condition of use, per TSCA sections 6(a) through (c), and only then determines whether an exemption under TSCA section 6(g) is appropriate. Accordingly, the underlying TSCA section 6(a) risk management elements would not be impacted if a TSCA section 6(g) exemption is determined by judicial review or operation of law to be invalid. Rather, the exempted condition of use would become subject to the underlying TSCA section 6(a) risk management element(s).

EPA also notes that there are multiple avenues to ask EPA to revisit issues in this TSCA section 6(a) rulemaking, both before and after the mandatory compliance dates are set consistent with TSCA section 6(d). EPA has the authority under TSCA section 6(g) to consider whether an exemption is appropriate and, consistent with TSCA section 6(g)(1), may propose such exemptions independently from this rulemaking. Additionally, any person could petition EPA to request that EPA issue or amend a rule under TSCA section 6.

A. Applicability

This final rule sets prohibitions and restrictions on the manufacture (including import), processing, distribution in commerce, commercial use, and disposal of TCE to prevent unreasonable risk of injury to health in accordance with TSCA section 6(a), 15 U.S.C. 2605(a). Additionally, pursuant to TSCA section 12(a)(2), this rule applies to TCE even if being manufactured, processed, or distributed in commerce solely for export from the United States because EPA has determined that TCE presents an unreasonable risk to health within the United States.

As discussed in Unit III.D., EPA's final rule is adopting a regulatory threshold of 0.1% of TCE (in the 2023 proposed rule, this was referred to as a de minimis threshold). In other words, the provisions of this rulemaking only apply when TCE is present in a product at 0.1% or greater by weight. Additionally, the provisions of this final rule only apply to chemical substances as defined under TSCA section 3. Notably, TSCA Section 3(2) excludes from the definition of chemical substance ''any food, food additive, drug, cosmetic, or device (as such terms are defined in Section 201 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321]) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device'' and ''any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 *et seq.*]) when manufactured, processed, or distributed in commerce for use as a pesticide.'' Additional details regarding TSCA statutory authorities can be found in section 2 of the Response to Comments document (Ref. 11).

As discussed in Unit III.D. of this final rule, TCE that is manufactured as a byproduct (such as during the manufacture of other chemicals) is not considered to be within the condition of use of TCE manufacturing. Relatedly, EPA is excluding from this rule processing of byproduct TCE when that byproduct TCE is processed within a site-limited, physically enclosed system that is part of the same overall manufacturing process from which the byproduct substance was generated. Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a chemical substance or as part of a mixture or product outside the site. In this way, EPA is aligning with the definition of ''site-limited'' in 40 CFR 711.3 and site-limited, physically enclosed systems in 40 CFR 711.10(d)(1).

Finally, as discussed in the 2023 TCE proposed rule, while EPA generally views the disposal condition of use under TSCA broadly, this rule is intended to address identified risks resulting from disposal of TCE to industrial pre-treatment, industrial treatment, or a POTW. Thus, only these limited disposal activities, including remediation methods that would be considered industrial wastewater pretreatment, industrial wastewater treatment, or discharge to a POTW, are included within the disposal condition of use in this rule. A remediation method would need to be considered one of these three types of disposal to fall within the condition of use under TSCA, and if not, would not be subject to the prohibition or other requirements of the rule.

B. Prohibition of Manufacture, Processing, Distribution in Commerce, Use, and Disposal

In general, EPA is finalizing the prohibitions as proposed with some modifications, including for compliance timeframes to provide for reasonable transitions and based on consideration of the public comments, as described in Unit III. This unit describes the prohibitions and associated compliance timeframes EPA is finalizing in this rule. As discussed in Unit IV.A. and in

the Response to Comments document (Ref. 11), the prohibitions do not apply to any substance that is excluded from the definition of ''chemical substance'' under TSCA section 3(2)(B)(ii) through (vi) (Ref. 11).

1. Prohibition of Manufacture, Processing, Distribution, and Industrial and Commercial Use of TCE

The final rule prohibits manufacture, processing, distribution in commerce, and all industrial and commercial use of TCE and TCE-containing products. The final regulation will impose prohibitions in a staggered timeframe, beginning at the top of the supply chain, as proposed. EPA is finalizing as proposed the timeframes for prohibition on manufacturing, processing, distribution in commerce, and industrial and commercial use of TCE unless otherwise specified. These timeframes are: a prohibition on manufacturing (including importing) TCE beginning 90 days from publication of this final rule, a prohibition on processing TCE beginning 180 days from publication of this final rule, a prohibition on distribution in commerce of TCE or TCE-containing products beginning 180 days from publication of this final rule, and a prohibition on industrial or commercial use of TCE and TCE-containing products beginning 270 days after publication of this final rule.

For several conditions of use, EPA is finalizing prohibitions that would take effect over a longer timeframe. After consideration of public comments, EPA is finalizing timeframes longer than proposed for prohibition of manufacture, processing, distribution, and commercial use of TCE for four uses: industrial and commercial use of TCE in energized electrical cleaner; industrial and commercial use of TCE in adhesives and sealants for aerospace applications; laboratory use of TCE in asphalt testing and recovery; and disposal of TCE to industrial pre-treatment, industrial treatment, or POTWs. EPA is finalizing a prohibition after 5 years, a timeframe shorter than proposed, for the industrial and commercial use of TCE as a processing aid for lithium battery separator manufacturing. The details of these and other timeframes for prohibition are described in this unit, and the rationale for these changes from the proposed rule is in Unit III.B.1. and Unit III.C. (EPA notes that for several conditions of use, in consideration of public comments and to provide for reasonable transitions, EPA is finalizing phase-outs ahead of immediate prohibitions (*e.g.,* for the processing of TCE for manufacture of HFC–134a), which are detailed in Units IV.B.3., 4., 5., and 6., or several time limited exemptions under TSCA section 6(g) (*e.g.,* for the industrial and commercial use of TCE for essential laboratory uses), which are detailed in Unit IV.G.)).

For two batch vapor degreasing conditions of use (open-top and closed-loop), EPA is finalizing as proposed the compliance dates for the prohibitions described in this unit. With certain exceptions, the prohibition on manufacturing and processing for this use comes into effect in 180 days for manufacturers and in 270 days for processors, including for processing into a formulation and for recycling. After 1 year, the prohibition on the industrial and commercial uses of TCE in open-top and closed-loop batch vapor degreasers comes into effect (see Unit III.B.1.c.i. and ii. of the 2023 TCE proposed rule for descriptions of these conditions of use and Unit VI.A.1. of the 2023 TCE proposed rule for a rationale for the slightly longer timeframe). As an exception, the use of TCE for batch vapor degreasing by Federal agencies and their contractors for land-based DoD defense systems will be prohibited after 5 years. (For a sub-set of the open-top and closed-loop batch vapor degreasing conditions of use, EPA is finalizing a phase-out for industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production for Federal agencies and their contractors, as described in Unit IV.B.4. EPA is also finalizing several exemptions related to vapor degreasing, which are described in Unit IV.G.).

Additionally, for uses not separately distinguished under longer phase-out or exemption timeframes, EPA is finalizing as proposed the compliance dates for the prohibitions on the commercial use of TCE as a processing aid and the relevant upstream uses. Specifically, aside from several exceptions, the prohibitions on manufacturing and processing for this use would come into effect 540 days months after the date of publication for manufacturers and in 2 years for processors. The prohibition would come into effect after 2 years for industrial and commercial use of TCE as a processing aid for several applications (as specified in the condition of use name and description, this includes use of TCE as a processing aid in battery separator manufacturing; process solvent used in polymer fiber spinning, fluoroelastomer manufacture and Alcantara manufacture; extraction solvent used in caprolactam manufacture; and precipitant used in beta-cyclodextrin manufacture) (see Unit III.B.1.c.xvi. of the 2023 TCE proposed rule for a description of this condition of use and Unit V.A.1. of the 2023 TCE proposed rule for a rationale for the different timeframe). For a subset of the industrial and commercial use of TCE as a processing aid, specifically for the use of TCE as a processing aid in lithium battery separator manufacture, EPA is finalizing a longer timeframe of 5 years before prohibition.

EPA is finalizing as proposed the prohibition on manufacturing of TCE for processing as a reactant/intermediate after 540 days and the prohibition for processing TCE as a reactant/intermediate after two years, unless otherwise noted. EPA is finalizing as proposed an extended phase-out for a subset of this condition of use, specifically processing TCE as a reactant/intermediate for the manufacture of HFC–134a, which is detailed in Unit IV.B.3.

As described earlier in this unit, for three conditions of use, EPA is finalizing prohibition timeframes longer than proposed. EPA is providing 3 years after publication of the final rule (rather than within a year, as proposed) for the industrial and commercial use of TCE in energized electrical cleaner, and the manufacture, processing, and distribution in commerce for such use. Additionally, for the industrial and commercial use of TCE in adhesives and sealants for aerospace applications, and the manufacture, processing, and distribution in commerce for such use, prohibitions would take effect 5 years after publication of the final rule (rather than within a year, as proposed). For the industrial and commercial use of TCE in batch vapor degreasing for land-based DoD defense systems by Federal agencies and their contractors, and the manufacture, processing, and distribution in commerce for such use, prohibitions would take effect 5 years after publication of the final rule. These changes are based on consideration of the public comments, and the rationale is detailed in Unit III.C. and the Response to Comments document (Ref. 11).

Also in consideration of public comment, EPA is changing the timeframe for prohibition on the industrial and commercial use of TCE as a processing aid in manufacturing lithium battery separators. EPA had proposed that industrial and commercial use of TCE as a processing aid for all battery separators would, under TSCA section 6(g), be exempt from prohibition for 10 years. As detailed in Unit III.B.1., EPA has modified the exemption to apply only to use of TCE for manufacturing lead-acid

battery separators, and for the industrial and commercial use of TCE as a processing aid in lithium battery separator manufacture, and for its associated upstream uses and disposal, EPA is finalizing a separate prohibition that will take effect in five years.

To aid with implementation of the compliance dates for the prohibitions on manufacturing, processing, and industrial and commercial use of TCE, and ensure that those prohibitions effectively address the unreasonable risk identified, EPA is also finalizing prohibitions on distribution in commerce of TCE. Generally, for most conditions of use EPA is finalizing a compliance date for the prohibition on distribution in commerce of TCE that will come into effect 180 days following publication of the final rule. In instances where EPA is finalizing a prohibition on manufacturing and processing TCE for a particular industrial and commercial use that is later than 180 days after publication of the final rule, the compliance date for the prohibition on distribution in commerce will generally be the same as the compliance date of the prohibition on manufacturing and processing TCE.

In consideration of the irreversible health effects associated with TCE exposure and public comment, EPA is finalizing prohibition timeframes that allow for successful implementation of the prohibitions in a manner that is as soon as practicable while providing for a reasonable transition period, consistent with TSCA section 6(d). EPA has no reasonably available information indicating that the compliance dates are not practicable for the activities that would be prohibited, or that additional time is needed for products to clear the channels of trade.

2. Prohibition of Manufacture, Processing, and Distribution in Commerce for Consumer Use of TCE

The final rule prohibits the manufacture, processing, and distribution in commerce of TCE and TCE-containing products for all consumer use.

EPA emphasizes that the consumer uses evaluated in the 2020 Risk Evaluation for TCE constitute all known, intended, and reasonably foreseen consumer uses of TCE. As described in this unit, EPA is prohibiting all manufacturing (including import) and processing of TCE to address the unreasonable risk to workers and ONUs driven by those conditions of use (Ref. 2). EPA determined any extended phase-outs or 6(g) exemptions are unnecessary for prohibitions on manufacture (including import), processing, or distribution in commerce of TCE for consumer use. EPA notes that all but one of the 24 consumer uses of TCE evaluated in the 2020 Risk Evaluation for TCE contributed to the unreasonable risk determination for TCE (Refs. 1, 2). Additionally, a prohibition on the manufacture (including import) and processing of TCE for consumer uses generally supports reducing risk to workers and ONUs from these upstream uses, as further discussed in Unit V.A. EPA also considered the risk of irreversible health effects associated with TCE exposure when finalizing these compliance dates. For these reasons, including the severity of the hazards of TCE, EPA is prohibiting the manufacturing (including import), processing, and distribution in commerce of TCE for all uses, which includes all consumer uses.

The compliance dates for the final prohibitions described in this unit relevant to consumer uses will come into effect for manufacturers in 90 days, for processors in 180 days, and for distributors (including all retailers) within 180 days. EPA has no reasonably available information indicating these compliance dates are not practicable for the activities that are prohibited or that additional time is needed for products to clear the channels of trade.

EPA emphasizes that retailers are prohibited from distributing any TCE or TCE-containing products after June 16, 2025, including those TCE-containing products that can continue to be distributed or used commercially for a longer period of time. EPA is finalizing as proposed the prohibition on distributing in commerce TCE and all TCE-containing products to consumers, in order to prevent products intended for industrial and commercial use that have longer timeframes before prohibition from being purchased by consumers, and is clarifying that this prohibition applies to distribution by retailers. A retailer is any person or business entity that distributes or makes available products to consumers, including through e-commerce internet sales or distribution. If a person or business entity distributes or makes available any product to at least one consumer, then it is considered a retailer (40 CFR 751.5). For a distributor not to be considered a retailer, the distributor must distribute or make available products solely to commercial or industrial end-users or businesses. Prohibiting manufacturers (including importers), processors, and distributors from distributing TCE, or any products containing TCE, to retailers prevents retailers from making these products available to consumers, which addresses that part of the unreasonable risk from TCE contributed by consumer use.

In consideration of the irreversible health effects associated with TCE exposure and public comment, in this final rule EPA is finalizing prohibition timeframes that allow for successful implementation of the prohibitions in a manner that is as soon as practicable while providing for a reasonable transition period, consistent with TSCA section 6(d). EPA has no reasonably available information indicating these compliance dates are not practicable for the activities that are prohibited or that additional time is needed for products to clear the channels of trade.

3. Phase-Out for Processing TCE as an Intermediate for the Manufacture of HFC–134a

As described in this unit, EPA is finalizing as proposed a longer phase-out timeframe for the manufacturing (including import) and processing of TCE as an intermediate for the manufacture of HFC–134a (1,1,1,2-tetrafluroethane; CASRN 811–97–2). EPA is finalizing an 8.5-year phase-out subject to the requirements discussed in this unit. All other processing of TCE as a reactant/intermediate will be subject to the prohibitions described in Unit IV.B.2. EPA will require a phase-out for processing of TCE as an intermediate for the manufacture of HFC–134a, which EPA will begin at the final rule's publication date and end 8.5 years after the publication of the final rule. Associated with this phase-out, EPA will require the establishment of the TCE WCPP, outlined in Unit IV.C. within 180 days after publication of the final rule, as workplace protections during the period of the phase-out. To set the volume reductions during the phase-out, EPA will require any facility processing TCE as an intermediate to manufacture HFC–134a in the United States to establish a baseline of the annual quantity of TCE processed by the facility as a feedstock to manufacture HFC–134a. EPA is requiring that within 180 days after the publication of the final rule the manufacturer could use the average of any 12 consecutive months in the 3 years preceding the publication of the final rule to calculate their baseline, based on records that demonstrate how the baseline annual volume was calculated. Following the establishment of a baseline volume, the regulated entity will then be required to implement a 4-step phase-out process; specifically, the phase-out will be a 25 percent reduction from the baseline volume every 2 years as follows: (1) 2.5 years after the publication of the final

rule each manufacturer of HFC–134a who processes TCE as an intermediate is not permitted to process TCE as an intermediate at an annual volume greater than 75 percent of the baseline; (2) 4.5 years after the publication of the final rule each manufacturer of HFC–134a who processes TCE as an intermediate is not permitted to process TCE as an intermediate at an annual volume greater than 50 percent of the baseline; (3) 6.5 years after the publication of the final rule each manufacturer of HFC–134a who processes TCE as an intermediate is not permitted to process TCE as an intermediate at an annual volume greater than 25 percent of the baseline; and (4) 8.5 years after the publication of the final rule each manufacturer of HFC–134a is prohibited from processing TCE as an intermediate.

EPA notes that the prohibition for manufacture (including importing), processing, and distribution in commerce of TCE for this condition of use will occur after 8.5 years to account for availability of TCE through the supply chain during the period of the phase-out of processing of TCE as an intermediate for the manufacture of HFC–134a. This timeframe will be longer than the prohibitions on manufacturing and processing TCE described in Unit IV.B.1. of this final rule.

EPA is also finalizing the requirement that regulated entities keep records of the annual quantity of TCE purchased and processed from the year 2023 until the termination of all processing of TCE as an intermediate. These records, along with the records demonstrating how the baseline annual volume was calculated, must be kept until five years after the processing of TCE as an intermediate ends.

EPA notes, per TSCA section 6(c)(2)(C), that although the processing of TCE to produce HFC–134a is prohibited eventually, processing PCE to produce HFC–134a will continue under a WCPP (RIN 2070–AK84). Although PCE is an alternative intermediate for the manufacture of HFC–134a, EPA has found that an 8.5-year phaseout for TCE is necessary because manufacturers who use TCE as an intermediate are not able to simply retrofit plants to use PCE. Therefore, a more immediate prohibition of the use of TCE for this condition of use could abruptly disrupt the domestic supply of HFC–134a and could adversely affect the gradual transition to new technologies driven by the AIM Act. However, EPA believes the transition period is reasonable because over the time period of the phaseout, EPA determined the transition to imported HFC–134a or HFC–134a manufactured with PCE could be made and, as such, the refrigerant would remain available while protecting workers.

4. Phase-Out of Industrial and Commercial Use of TCE as a Solvent for Closed-Loop Batch Vapor Degreasing for Rayon Fabric Scouring for Rocket Booster Nozzle Production

EPA is finalizing as proposed a longer phase-out timeframe for industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors. This is the industrial and commercial use of TCE in a closed-loop batch vapor degreaser to clean, or 'scour,' rayon fabric to remove sizing (*i.e.,* protective filler or glaze on textiles), oils, and other contaminants from the rayon fabric that is used to line the inside of rocket booster nozzles; the degreasing is essential in preparing the rayon fabric before a carbonization process ahead of being used in the rocket booster nozzles. If contaminants are not removed properly from the rayon, the result could include nozzle failure (Ref. 44). More information on this use and the rationale for the phase-out are in Unit VI.A.1. of the proposed rule. For this sub-set of the vapor degreasing condition of use, when conducted by Federal agencies and their contractors, EPA is finalizing a 10-year phase-out subject to the requirements discussed in this unit. (All other industrial and commercial use of TCE as a solvent for vapor degreasing, including use of TCE in closed-loop batch vapor degreasing of other parts or materials, will be subject to the prohibitions described in Unit IV.B.2.). For the phase-out, within 5 years of the publication date of the final rule the Federal agency that is the end user of the rayon fabric for rocket booster nozzle production (*e.g.,* the DOD or NASA) will need to conduct a final pre-launch test of rocket boosters without using TCE; this test is further discussed in Unit VI.A.1.a. of the 2023 TCE proposed rule. By 10 years from the publication date of the final rule, the phase-out will be complete and industrial and commercial use of TCE as a solvent for closed-loop batch vapor degreasing, including for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors, is prohibited. As part of this phase-out, EPA is requiring a TCE WCPP, described in Unit IV.C., within 180 days after publication of the final rule, as workplace protections during the period of the phase-out until the full prohibition takes effect. Additionally, this phase-out will include recordkeeping requirements beginning 270 days after publication of the final rule related to the rayon fabric scouring for end use in rocket booster nozzle production. The entity must have records from a Federal agency indicating that their closed-loop batch vapor degreasing with TCE is for rayon fabric scouring for end use in rocket booster nozzle production for a Federal agency or a contractor. Beginning 5 years after the publication of the final rule, to continue to use TCE for closed-loop batch vapor degreasing for this specific use, the user must have records from a Federal agency indicating that a final pre-launch test for the rayon fabric scouring has been conducted with an alternative chemical or process. As a condition of this phase-out, entities will be required to transition from TCE and to switch to use of the tested alternative if it proves to be a suitable alternative.

5. Phase-Out of Laboratory Use of TCE in Asphalt Testing And Recovery

As discussed in more detail in Unit III.C.3., EPA is finalizing a longer phase-out timeframe for industrial and commercial use of TCE in laboratory testing of asphalt. Specifically, EPA is finalizing a phase-out of 10 years for the industrial and commercial use of TCE in asphalt testing and recovery, with a prohibition on use of TCE in manual centrifuge processes at 5 years. As part of this phase-out, EPA is requiring a TCE WCPP, described in Unit IV.C., within 180 days after publication of the final rule, as workplace protections during the period of the phase-out until the full prohibition takes effect.

6. Phase-Out of Disposal of TCE to Industrial Pre-Treatment, Industrial Treatment, or POTWs

EPA is prohibiting the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works, *i.e.,* wastewater that contains TCE that is collected and/or treated on site or transported to a third party site, and includes the mixing of TCE with wastewater and the discharge of TCE-contaminated wastewater (description of disposal for the purposes of this rulemaking is in Units IV.C.1.d. and IV.E.1.). TSCA section 6(a) provides EPA the authority to prohibit or otherwise regulate any manner or method of disposal of a chemical substance by its manufacturer, processor, or any other person who uses or disposes of the chemical substance for commercial purposes. Facilities generating solid waste with TCE concentrations at or above the RCRA

regulatory level of 0.5 mg/L using the Toxicity Characteristic Leaching Procedure (see 40 CFR 261.24) (or solid waste that is otherwise hazardous under RCRA Subtitle C) will need to manage the waste in compliance with all applicable RCRA requirements. This includes a ban on dilution as a substitute for adequate treatment (40 CFR 268.3).

The compliance date for the prohibition described in this unit will be September 15, 2025 for manufacturers, processors, distributors, and industrial and commercial users disposing of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works. EPA has no reasonably available information indicating that for the majority of users the proposed compliance dates would not be as soon as practicable and would not provide a reasonable transition period for converting to an alternative disposal method.

For a small set of uses, EPA has determined that wastewater disposal is an essential part of the ongoing industrial and commercial use, as described in Units III.B.1. and III.B.2. EPA is therefore finalizing extended phase-outs of wastewater disposal for certain conditions of use that have extended compliance timeframes or an exemption under TSCA section 6(g). The following conditions of use will be able to continue to dispose of TCE to industrial pre-treatment, industrial treatment, and POTWs: the industrial and commercial use of TCE as a processing aid in lithium battery separator manufacturing will have 5 years after the publication date of the final rule; the industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet material manufacturing will have 15 years; and the industrial and commercial use of TCE as a processing aid in lead-acid battery separator manufacturing will have 20 years. During the time these conditions of use are continuing consistent with a TSCA section 6(d) phase-out or 6(g) exemption, EPA is requiring that the industrial pre-treatment and/or industrial treatment of wastewater containing TCE from these conditions of use will also be subject to the WCPP described in Unit IV.C. This is distinct from conditions for workplace requirements for the time-limited exemption under TSCA section 6(g) for disposal of TCE to industrial pre-treatment and/or industrial treatment, to support ongoing critical processing aid uses and to facilitate cleanup projects of TCE-contaminated groundwater and other wastewater generated from the cleanup of historical waste disposal sites, which are described in Unit IV.E.2. POTWs receiving TCE-containing wastewater, regardless of source, will be required to meet the worker protections described in Unit IV.E.3.

C. WCPP for Certain Conditions of Use

1. Applicability

EPA is finalizing a WCPP for those conditions of use that will continue temporarily for more than 1 year under a phase-out or a TSCA section 6(g) exemption. The final WCPP differs in certain aspects from the WCPP as proposed; the rationale for these changes are discussed in Unit III.A. EPA is finalizing the WCPP for the following conditions of use of TCE: domestic manufacturing; import; processing as a reactant/intermediate; processing into formulation, mixture or reaction product; processing by repackaging; recycling; industrial and commercial use as a processing aid in process solvent used in battery manufacture; process solvent used in polymer fabric spinning, fluoroelastomer manufacture and Alcantara manufacture; extraction solvent used in caprolactam manufacture; precipitant used in beta-cyclodextrin manufacture; industrial and commercial use as an adhesive and sealant for essential aerospace applications; industrial and commercial use of in batch vapor degreasing for land-based DoD defense systems; industrial and commercial use in other miscellaneous industrial and commercial uses (laboratory use) industrial and commercial use as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors; industrial and commercial use in closed-loop or open-top batch vapor degreasing for essential aerospace parts and narrow tubing used for medical devices; industrial and commercial use for vessels of the Armed Forces and their systems; industrial and commercial use of TCE as a solvent in closed-loop vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors; and disposal to industrial pre-treatment, industrial treatment, and POTWs. This Unit provides a description of those uses that will continue for more than 1 year under the WCPP to assist with compliance. In some instances, the description is of a subset of a larger condition of use assessed in the 2020 Risk Evaluation for TCE.

a. Manufacturing (Includes Import)

i. Domestic Manufacture

This condition of use refers to the making or producing of a chemical substance within the United States (including manufacturing for export), or the extraction of a component chemical substance from a previously existing chemical substance or a complex combination of substances. For purposes of this rule, this description does not apply to TCE production as a byproduct, including during the manufacture of 1,2-dichloroethane, which EPA intends to consider in the risk evaluation for 1,2-dichloroethane (Ref. 83).

ii. Import

This condition of use refers to the act of causing a chemical substance or mixture to arrive within the customs territory of the United States.

b. Processing

i. Processing as a Reactant/Intermediate

This condition of use refers to processing TCE in chemical reactions for the manufacturing of another chemical substance or product. Through processing as a reactant or intermediate, TCE serves as a feedstock in the production of another chemical product via a chemical reaction in which TCE is completely consumed. For example, TCE is processed as an intermediate in the production of 1,1,1,2-tetrafluoroethane, an HFC also known as HFC–134a, which is used as a refrigerant and in fluorocarbon blends for refrigerants. This condition of use includes reuse of TCE, including TCE originally generated as a byproduct or residual TCE, as a reactant.

ii. Processing: Incorporation Into a Formulation, Mixture, or Reaction Product

This condition of use refers to when TCE is added to a product (or product mixture) prior to further distribution of the product. Such products include, but are not limited to, solvents (for cleaning or degreasing), adhesives and sealant chemicals, and solvents that become part of a product formulation or mixture (*e.g.,* lubricants and greases, paints and coatings, other uses).

iii. Processing: Repackaging

This condition of use refers to the preparation of a chemical substance for distribution in commerce in a different form, state, or quantity. This includes but is not limited to transferring the chemical from a bulk container into smaller containers.

iv. Processing: Recycling

This condition of use refers to the process of managing used solvents that are collected, either on-site or transported to a third-party site, for commercial purposes other than disposal. Spent solvents can be restored via solvent reclamation/recycling. Waste solvents can be restored to a condition that permits reuse via solvent reclamation/recycling. The recovery process may involve an initial vapor recovery or mechanical separation step followed by distillation, purification, and final packaging.

c. Industrial and Commercial Use

i. Industrial and Commercial Use as a Processing Aid in: Process Solvent Used in Battery Manufacture; Process Solvent Used in Polymer Fabric Spinning, Fluoroelastomer Manufacture and Alcantara Manufacture; Extraction Solvent Used in Caprolactam Manufacture; and Precipitant Used in Beta-Cyclodextrin Manufacture

This condition of use refers to industrial and commercial use of TCE to improve the processing characteristics or the operation of process equipment when added to a process or to a substance or mixture to be processed. The chemical substance is not intended to remain in or to become a part of the reaction product nor has function in the reaction product.

ii. Industrial and Commercial Use as an Adhesive and Sealant for Essential Aerospace Applications

This condition of use refers to the industrial and commercial use of TCE in adhesive and sealant products, *e.g.,* in products to promote bonding between other substances, promote adhesion of surfaces, or prevent seepage of moisture or air, for essential aerospace applications. In particular, this includes use of TCE as an adhesive or sealant in aircraft pneumatic deicing boots; in solvent bonding of plastic components, including on Oxygen Container Assemblies for Passenger Service Unit products used in aircraft; and as an adhesive or sealant for flight-critical equipment on new and existing aircraft, both commercial and military.

iii. Miscellaneous Industrial and Commercial Uses: Laboratory Use

This condition of use refers to the industrial and commercial use of TCE in an established laboratory, for example a laboratory program accredited by the AIHA (*e.g.,* AIHA LAP, LLC Policy Module 2A/B/E of Revision 17.3), or other analogous industry-recognized program for chemical analysis (*e.g.,* to test hot mix asphalt binder content, as a reference standard, etc.), chemical synthesis, extracting and purifying other chemicals, dissolving other substances, and similar activities.

iv. Industrial and Commercial Use as Solvent for Closed-Loop Batch Vapor Degreasing for Rayon Fabric Scouring for End Use in Rocket Booster Nozzle Production

This condition of use refers to the process of heating TCE to its volatilization point and using its vapor to remove dirt, oils, greases, and other surface contaminants (such as drawing compounds, cutting fluids, coolants, solder flux, and lubricants) for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors, in closed-loop batch vapor degreasers.

v. Industrial and Commercial Use as Solvent for Closed-Loop or Open-Top Batch Vapor Degreasing for Essential Aerospace Parts and for Narrow Tubing for Medical Devices

This condition of use refers to the process of heating TCE to its volatilization point and using its vapor to remove dirt, oils, greases, and other surface contaminants (such as drawing compounds, cutting fluids, coolants, solder flux, and lubricants) from essential aerospace parts and components where alternatives present technical feasibility or cleaning performance challenges in meeting Federal agency specifications or long-standing design specifications and from narrow tubing intended for use in medical devices (*e.g.,* tubing where a portion of the outside diameter is 0.625 inches or less), in open-top batch or closed-loop batch vapor degreasers.

vi. Industrial and Commercial Use for Vessels of the Armed Forces and Their Systems, and in the Maintenance, Fabrication, and Sustainment for and of Such Vessels and Systems

This condition of use refers to the industrial and commercial use of TCE for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems: as potting compounds for naval electronic systems and equipment; sealing compounds for high and ultra-high vacuum systems; bonding compounds for materials testing and maintenance of underwater systems and bonding of nonmetallic materials; and cleaning agents to satisfy cleaning requirements (which includes degreasing using wipes, sprays, solvents and vapor degreasing) for: materials and components required for military ordnance testing; temporary resin repairs in vessel spaces where welding is not authorized; ensuring polyurethane adhesion for electronic systems and equipment repair and installation of elastomeric materials; various naval combat systems, radars, sensors, equipment; fabrication and prototyping processes to remove coolant and other residue from machine parts; machined part fabrications for naval systems; installation of topside rubber tile material aboard vessels; and vapor degreasing required for substrate surface preparation prior to electroplating processes.

vii. Industrial and Commercial Use as a Solvent for Closed-Loop Batch Vapor Degreasing Necessary for Rocket Engine Cleaning by Federal Agencies and Their Contractors

This condition of use refers to the process of heating TCE to its volatilization point and using its vapor to remove dirt, oils, greases, and other surface contaminants (such as drawing compounds, cutting fluids, coolants, solder flux, and lubricants), for rocket engine cleaning by Federal agencies and their contractors. This involves cleaning small diameter parts, such as rocket engine nozzle coolant tubes, and removing the fluids used for manufacturing.

viii. Industrial and Commercial Use of TCE for Batch Vapor Degreasing for Land-Based DoD Defense Systems by Federal Agencies and Their Contractors

This condition of use refers to the process of heating TCE to its volatilization point and using its vapor to remove dirt, oils, greases, and other surface contaminants (such as drawing compounds, cutting fluids, coolants, solder flux, and lubricants), for land-based DoD defense systems cleaning by Federal agencies and their contractors.

d. Disposal

This condition of use generally refers to the process of disposing of generated waste streams that are either collected on-site or transported to a third-party site and typically includes both processing for disposal as well as distribution in commerce for disposal. For this rule, this includes the mixing of TCE with wastewater and the discharge of TCE-contaminated wastewater pursuant to a National Pollutant Discharge Elimination System (NPDES) permit, and specifically includes discharge to industrial pre-treatment, industrial treatment, or publicly owned treatment works. The evaluation of the disposal condition of use in the 2020 Risk Evaluation for TCE

(Ref. 1) was limited to the disposal of TCE-containing wastewater and did not address disposal activities not involving TCE in wastewater. Therefore, EPA considers disposal activities not involving TCE in wastewater to be outside of the scope of this rule. This means that, for example, a facility that generates TCE as a byproduct, isolates the TCE from the process for the sole purpose of disposal, and sends it off-site for disposal to a hazardous waste incinerator permitted under RCRA is not covered by this final rule.

2. Overview

A WCPP encompasses inhalation exposure thresholds, includes monitoring and recordkeeping requirements to verify that those thresholds are not exceeded, and may include other components, such as dermal protection. Under a WCPP, owners or operators have some flexibility, within the parameters outlined in this Unit, regarding how they prevent exceedances of the identified EPA exposure limit thresholds. In the case of TCE, EPA has determined that meeting the EPA exposure limit thresholds for certain occupational conditions of use is necessary to protect health from inhalation risks during phaseouts and while exempted activities are ongoing.

Implementation of the WCPP would have to begin by June 16, 2025 or within 30 days of introduction of TCE into the workplace, whichever is later, at which point entities would have to have completed their initial monitoring (as described in Unit IV.C.4.b.). Additionally, EPA requires that each owner or operator ensure that the airborne concentration of TCE does not exceed the interim ECEL for all potentially exposed persons no later than September 15, 2025, and the implementation of any needed exposure controls based on initial monitoring and development of an exposure control plan no later than September 15, 2025 (as described in Unit IV.C.6.).

EPA uses the term ''potentially exposed person'' in this Unit and in the regulatory text to include workers, ONUs, employees, independent contractors, employers, and all other persons in the work area where TCE is present and who may be exposed to TCE under the conditions of use for which a WCPP or specific prescriptive controls would apply. As defined in 40 CFR 751.5, ''*Potentially exposed person* means any person who may be exposed to a chemical substance or mixture in a workplace as a result of a condition of use of that chemical substance or mixture.'' EPA notes that this definition is intended to apply to occupational workspaces as part of implementation of the WCPP and other restrictions. One important reason to define a potentially exposed person for the purposes of a WCPP as any person who may be exposed in the workplace is to emphasize the broad scope of exposures which must be categorized when implementing a WCPP. EPA notes that this definition is intended to apply only in the context of risk management, and specifically in the context of a WCPP (*e.g.,* workers directly using the chemical, workers in the vicinity of the use, students in a laboratory setting). The term is not intended as a replacement for the term Potentially Exposed or Susceptible Subpopulation as defined by TSCA section 3(12). EPA additionally recognizes that other individuals or communities may be exposed to TCE as consumers, members of fenceline communities, or members of the general population, which is separate and apart from those potentially exposed for the purposes of the regulatory requirements of the WCPP. In those instances, where regulatory requirements address exposures unrelated to a WCPP, EPA would use distinct terminology to refer to those other populations. For conditions of use that will continue for longer than 1 year, such as those under a phaseout or a TSCA section 6(g) exemption, EPA requires a comprehensive WCPP, prescriptive controls, or wastewater worker protections to reduce exposures to TCE for potentially exposed persons, *e.g.,* persons directly handling the chemical or in the area where the chemical is being used. Similarly, the 2020 Risk Evaluation for TCE (Ref. 1) did not distinguish between employers, contractors, or other legal entities or businesses that manufacture, process, distribute in commerce, use, or dispose of TCE. For this reason, EPA uses the term ''owner or operator'' to describe the entity responsible for implementing the WCPP, prescriptive controls, or wastewater worker protection provisions in any workplace where an applicable condition of use identified in the following paragraph and subject to the WCPP or controls is occurring. The term includes any person who owns, leases, operates, controls, or supervises such a workplace. While owners or operators remain responsible for ensuring compliance with the WCPP requirements, prescriptive controls, or wastewater worker protections in the workplace, they may contract with others to provide training or implement a respiratory protection program, for example. For the provisions in this rule, any requirement for an owner or operator or an owner and operator is a requirement for any individual that is either an owner or an operator.

EPA emphasizes that this approach is essential for protecting health from the risks presented by TCE during the term of a phaseout or exemption, including to individuals who may not be covered by OSHA requirements, such as volunteers, self-employed persons, and state and local government workers who are not covered by an OSHA-Approved State Plan. EPA uses the term ''owner or operator'' in TSCA programs because the term is used in other EPA programs to describe persons with responsibilities for implementing statutory and regulatory requirements at particular locations. See, for example, section 113 of the Clean Air Act (CAA), 42 U.S.C. 7412, which defines ''owner or operator'' as a person who owns, leases, operates, controls, or supervises a stationary source. There is a similar definition in section 306 of the Clean Water Act (CWA), 33 U.S.C. 1316. EPA understands that the use of this term may result in multiple entities bearing responsibility for complying with provisions of this final rule, including the WCPP. However, this is also the case for workplaces regulated by OSHA, including those regulated under OSHA's general industry standards at 29 CFR part 1910.

OSHA's 1999 Multi-Employer Citation Policy explains which employers should be cited for a hazard that violates an OSHA standard (Ref. 84). The Policy describes four different roles that employers may fill at a workplace and describes who should be cited for a violation based on factors such as whether the employer created the hazard, had the ability to prevent or correct the hazard, and knew or should have known about the hazard. More than one employer may be cited for the same hazard. This final rule will have similar results, in that more than one owner or operator may be responsible for compliance.

The OSHA multi-employer citation policy is an example of a guidance governing situations where more than one regulated entity is present. EPA has received several requests for clarification of the applicability of the term ''owner or operator'' to sites where more than one entity owns, leases, or controls a workplace where a TCE condition of use is ongoing and where implementation of the WCPP is required. EPA understands that there are a wide variety of situations where these questions could arise, and plans to issue guidance consistent with TSCA

authorities that explains how EPA will approach the issue of responsibility for implementation of, and compliance with, the WCPP requirements in practice.

EPA's implementation of the interim ECEL as part of a WCPP aligns with, to the extent possible, certain elements of the existing OSHA standards for regulating toxic and hazardous substances under 29 CFR part 1910, subpart Z. However, EPA is finalizing a new, lower occupational exposure limit for TCE, based on the TSCA 2020 Risk Evaluation for TCE, public comments, and other information as discussed in Unit III.A.1., while aligning with existing requirements wherever possible. For TCE, the WCPP and other workplace controls in this final rule are necessary to protect against health risks from exposures to TCE while conditions of use are being phased out or are ongoing during the term of a TSCA section 6(g) exemption and provide the familiarity of a pre-existing framework for the regulated community.

This Unit includes a summary of the WCPP, including a description of the finalized exposure limits including an interim ECEL and an interim ECEL action level; implementation requirements including monitoring requirements; a description of potential exposure controls in accordance with the hierarchy of controls, including engineering controls, administrative controls, and PPE as it relates to dermal protection and respirator selection; and additional finalized requirements for recordkeeping, workplace participation, and notification. This Unit also describes compliance timeframes revised from the proposed rule, changes by EPA to certain provisions of the WCPP based on public comments, and addition of new provisions in the WCPP based on public comments used to inform this final rule.

3. Interim Existing Chemical Exposure Limit (ECEL), EPA Action Level

As discussed in Unit III.A.1., EPA is finalizing an interim ECEL under TSCA section 6(a) of 0.2 ppm as an 8-hour TWA based on the health effects of TCE, the infeasibility of measuring the proposed ECEL of 0.0011 ppm, and other factors. By interim ECEL, EPA means an ECEL that is in place only for the timeframes indicated for each condition of use, after which prohibitions would take effect. EPA has determined that ensuring exposures remain at or below the 8-hour TWA ECEL of 0.2 ppm is necessary to protect health for those conditions of use that will continue for more than a year.

EPA is also finalizing an interim ECEL action level at half of the 8-hour interim ECEL, or 0.1 ppm as an 8-hour TWA. The interim ECEL action level is a definitive cut-off point below which certain compliance activities, such as periodic monitoring, are not required as described further in this Unit. In this way, EPA's WCPP for TCE aligns with other familiar chemical-specific frameworks in the OSHA standards for regulating toxic and hazardous substances under 29 CFR part 1910, subpart Z that establish an action level. As explained by OSHA, the decision to set the action level at one-half the PEL was based on its successful experience using this fraction as the action level in many standards (*e.g.,* arsenic, ethylene oxide, vinyl chloride and benzene); for most workplaces, the agency found that variability in employee exposures is normally such that an action level set at one-half the TWA PEL is appropriate (Ref. 85).

In summary, this final rule requires owners or operators to ensure the airborne concentration of TCE within the personal breathing zone of potentially exposed persons remains at or below 0.2 ppm as an 8-hour TWA ECEL after September 15, 2025, or beginning 120 days after introduction of TCE into the workplace if TCE use commences after June 16, 2025. EPA is also finalizing an action level of 0.1 ppm as an 8-hour TWA. For the purposes of this rulemaking, EPA will interpret personal breathing zone consistent with how OSHA defines it, as a hemispheric area forward of the shoulders within a six-to-nine-inch radius of a worker's nose and mouth and requires that exposure monitoring air samples be collected from within this space (Ref. 86). EPA is finalizing the interim ECEL for most of those occupational conditions of use that will continue for more than a year to ensure that no person is exposed to inhalation of TCE in excess of these concentrations resulting from those conditions of use (for a small number of occupational conditions of use, EPA is finalizing prescriptive controls or other workplace requirements, as described in more detail in Units IV.D and E). As discussed in Unit III.A.1., one of the considerations in finalizing this interim ECEL is the availability of sampling and analytical methods sufficient to accurately detect TCE concentrations at the proposed ECEL and ECEL action level. OSHA, NIOSH, and EPA sampling methods (both active and passive) with sufficient limits of quantification are available to support WCPP implementation (Ref. 87).

4. Monitoring Requirements

a. In General

Initial monitoring for TCE is critical for establishing a baseline of exposure for potentially exposed persons; similarly, periodic exposure monitoring assures continued compliance over time so that potentially exposed persons are not exposed to levels above the interim ECEL. Exposure monitoring could be suspended if certain conditions described in this Unit are met. Also, in some cases, a change in workplace conditions with the potential to impact exposure levels would warrant additional monitoring, which is also described.

EPA is finalizing with modifications from proposal its requirement that owners or operators determine each potentially exposed person's exposure by either taking a personal breathing zone air sample of each potentially exposed person's exposure or by taking personal breathing zone air samples that are representative of each potentially exposed person with a similar exposure profile to a chemical substance or mixture based on the substantial similarity of tasks performed, the manner in which the tasks are performed, and the materials and processes with which they work (hereinafter identified as an ''exposure group''). Personal breathing zone air samples are representative of the 8-hour TWA of all potentially exposed persons in an exposure group if the samples are of the full shift-exposure of at least one person who represents the highest potential TCE exposures in that exposure group. In addition, the initial monitoring will be required when and where the operating conditions are best representative of each potentially exposed person's work-shift exposures. Personal breathing zone air samples taken during one work shift may be used to represent potentially exposed person exposures on other work shifts where the owner or operator can document that the tasks performed and conditions in the workplace are similar across shifts. Additionally, air sampling is required to measure ambient concentrations for TCE without taking respiratory protections into account as sampling is being performed. For purposes of exposure monitoring requirements, owners and operators are only required to monitor potentially exposed persons that are expected to be present in the workplace.

EPA is also finalizing requirements that the owner or operator ensure, for initial and periodic monitoring, that their exposure monitoring methods are accurate to a confidence level of 95%

and are within (plus or minus) 25% of airborne concentrations of TCE above the 8-hour TWA interim ECEL. To ensure compliance for monitoring activities, EPA is finalizing recordkeeping requirements and will require that owners or operators document their choice of monitoring method outlined in this Unit. As described in Unit III.A.3., EPA is finalizing the requirement that owners or operators meet certain documentation requirements for each monitoring event of TCE, including compliance with GLP Standards in accordance with 40 CFR part 792 or use of a laboratory accredited by the AIHA (*e.g.,* AIHA LAP, LLC Policy Module 2A/B/E of Revision 17.3), or other analogous industry-recognized program. Additionally, as described in Unit III.A.3., EPA is finalizing the requirement that owners or operators must re-monitor within 15 working days after receipt of any exposure monitoring when results indicate non-detect, unless an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist reviews the monitoring results and determines re-monitoring is not necessary.

For each monitoring event of TCE, EPA is requiring that the owner or operator record relevant information, including but not limited to, the quantity, location(s), and manner of TCE in use at the time of each monitoring event; the dates, durations, and results of each sample taken; and the name, work shift, job classification, work area, and type of respiratory protection (if any) worn by each monitored person. EPA further requires documentation of the following whenever monitoring for the WCPP is required:

(i) All measurements that may be necessary to determine the conditions (*e.g.,* work site temperatures, humidity, ventilation rates, monitoring equipment type and calibration dates) that may affect the monitoring results;

(ii) Identification of all other potentially exposed persons that a monitored person is intended to represent if using a representative sample;

(iii) Use of appropriate sampling and analytical methods;

(iv) Compliance with the GLP Standards at 40 CFR part 792 or any accredited lab including AIHA (*e.g.,* AIHA LAP, LLC Policy Module 2A/B/E of Revision 17.3), or other analogous industry-recognized program;

(v) Information regarding air monitoring equipment, including type, maintenance, calibrations, performance tests, limits of detection, and any malfunctions.

b. Initial Exposure Monitoring

Under the final rule, each owner or operator of a facility engaged in one or more of the conditions of use listed earlier in Unit IV.C.1., except disposal, is required to perform initial exposure monitoring by June 16, 2025 or within 30 days of introduction of TCE into the workplace, whichever is later, to determine the extent of exposure of potentially exposed persons to TCE. Initial monitoring will notify owners and operators of the magnitude of possible exposures to potentially exposed persons with respect to their work conditions and environments. Based on the magnitude of possible exposures in the initial exposure monitoring, the owner or operator may need to increase or decrease the frequency of future periodic monitoring, adopt new exposure controls (such as engineering controls, administrative controls, and/or a respiratory protection program), or to continue or discontinue certain compliance activities such as periodic monitoring. In addition, the initial monitoring will be required when and where the operating conditions are best representative of each potentially exposed person's work-shift exposures. If the owner or operator chooses to use a sample that is representative of potentially exposed persons' work-shift exposures (rather than monitor every individual), such sampling should be representative (*i.e.,* taken from the breathing zone of potentially exposed persons and reflect duration appropriate exposure) of the most highly exposed persons in the workplace. Additionally, EPA expects that owners and operators will conduct initial exposure monitoring representative of all tasks that potential exposed persons are expected to do. EPA understands that certain tasks may occur less frequently or may reflect accidental exposures (for example, due to malfunction).

EPA also recognizes that some entities may already have objective exposure monitoring data. If the owner or operator has monitoring data conducted within five years prior to the publication date of the final rule and the monitoring satisfies all other requirements in Unit IV., including the requirement that the data represents the highest TCE exposures likely to occur under reasonably foreseeable conditions of use, the owner or operator may rely on such earlier monitoring results for the initial baseline monitoring sample. Prior monitoring data cannot be used where there has been a change in work conditions or practices that is expected to result in new or additional exposures.

As described in more detail later in this unit, the owner or operator must conduct periodic monitoring at least once every five years since its last monitoring. This periodic monitoring must be representative of all the potentially exposed persons in the workplace and the tasks that they are expected to do.

c. Periodic Exposure Monitoring

EPA is finalizing as proposed the following periodic monitoring for owners or operators. These finalized requirements are also outlined in Table 1.

- If the samples taken during the initial exposure monitoring reveal a concentration below the interim ECEL action level (<0.1 ppm 8-hour TWA), ECEL periodic monitoring is required at least once every five years, except when additional exposure monitoring (Unit IV.C.4.d.) measurements require it.
- If the most recent exposure monitoring concentration is at or above the interim ECEL action level (≥0.1 ppm 8-hour TWA) but at or below the interim ECEL (≤0.2 ppm 8-hour TWA), the owner or operator must repeat the periodic exposure monitoring within 180 days of the most recent exposure monitoring.
- If the most recent exposure monitoring concentration is above the interim ECEL (>0.2 ppm 8-hour TWA), the owner or operator must repeat the periodic exposure monitoring within 90 days of the most recent exposure monitoring.
- If the most recent (non-initial) exposure monitoring indicates that airborne exposure is below the interim ECEL action level, the owners or operators must repeat such monitoring within 180 days of the most recent monitoring until two consecutive monitoring measurements, taken at least seven days apart, are below the interim ECEL action level (<0.1 ppm 8-hour TWA), at which time the owner or operator must repeat the periodic exposure monitoring at least once every five years.
- In instances where an owner or operator does not manufacture, process, use, or dispose of TCE for a condition of use for which the WCPP is required over the entirety of time since the last required periodic monitoring event, the owner or operator is permitted to forgo the next periodic monitoring event. However, documentation of cessation of use of TCE is required and periodic monitoring must resume when the owner or operator restart any of the conditions of use listed in Unit IV.C.1., except disposal.

TABLE 1—PERIODIC MONITORING REQUIREMENTS

Air concentration condition	Periodic monitoring requirement
If the initial exposure monitoring concentration is below the interim ECEL action level.	Periodic exposure monitoring at least once every 5 years.
If the most recent exposure monitoring concentration is at or above the interim ECEL action level but at or below the interim ECEL.	Periodic exposure monitoring is required every 180 days of the most recent exposure monitoring.
If the most recent exposure monitoring concentration is above the interim ECEL.	Periodic exposure monitoring is required every 90 days of the most recent exposure monitoring.
If the two most recent (non-initial) exposure monitoring measurements, taken at least seven days apart within a 6-month period, indicate that airborne exposure is below the interim ECEL action level (<0.1 ppm 8-hr TWA).	Periodic exposure monitoring is required within five years of the most recent exposure monitoring.
If the owner or operator engages in a condition of use for which WCPP is required but does not manufacture, process, use, or dispose of TCE in that condition of use over the entirety of time since the last required monitoring event.	The owner or operator may forgo the next periodic monitoring event. However, documentation of cessation of use of TCE is required and periodic monitoring is required when the owner or operator resumes the condition of use.

Note: Additional scenarios in which monitoring may be required are discussed in Unit IV.C.4.d.

d. Additional Exposure Monitoring

EPA is finalizing that each owner or operator conduct additional exposure monitoring within 30 days after there has been a change in the production, process, control equipment, personnel or work practices that may reasonably be expected to result in new or additional exposures at or above the interim ECEL action level, or when the owner or operator has any reason to believe that new or additional exposures at or above the interim ECEL action level have occurred, for example if an owner or operator receives information from potentially exposed person(s) suggesting that such new or additional exposures may have occurred. Prior monitoring data cannot be used to meet this requirement. In the event of start-up or shutdown, or spills, leaks, ruptures or other breakdowns or unexpected releases that may lead to exposure to potentially exposed persons, EPA is finalizing that each owner or operator must conduct additional exposure monitoring of potentially exposed persons (using personal breathing zone sampling) within 30 days after the conclusion of the start-up or shutdown and/or the cleanup of the spill or repair of the leak, rupture, or other breakdown. Prior monitoring data cannot be used to meet this requirement. An additional exposure monitoring event may result in an increased frequency of periodic monitoring. For example, if the initial monitoring results from a workplace are above the interim ECEL action level, but below the interim ECEL, periodic monitoring is required every 180 days. If additional monitoring is performed because increased exposures are suspected, and the results are above the interim ECEL, subsequent periodic monitoring would have to be performed every 90 days. The required additional exposure monitoring should not delay implementation of any necessary cleanup or other remedial action to reduce the exposures to persons in the workplace.

5. Regulated Area

EPA is finalizing its requirement that the owner or operator demarcate any area where airborne concentrations of TCE exceeds or are reasonably expected to exceed the interim ECEL by September 15, 2025, or within 90 days after receipt of any exposure monitoring that indicates exposures exceeding the interim ECEL. To provide more clarity regarding how regulated areas must be demarcated, EPA has incorporated the language analogous to OSHA's regulated area requirements under the standards for toxic and hazardous substances (29 CFR part 1910, subpart Z) into this final rule. Owners and operators must demarcate regulated areas from the rest of the workplace in any manner that adequately establishes and alerts potentially exposed persons to the boundaries of the area and minimizes the number of authorized persons exposed to TCE within the regulated area. This can be accomplished using administrative controls (*e.g.,* highly visible signifiers) in multiple languages as appropriate (*e.g.,* whenever potentially exposed persons who are primarily Spanish-speaking are likely to be present, owners and operators should post additional highly visible signifiers in Spanish), placed in conspicuous areas. The owner or operator is required to restrict access to the regulated area from any potentially exposed person who lacks proper training or is otherwise unauthorized to enter.

6. Exposure Control Plan

EPA is finalizing its requirement that owners or operators implementing the WCPP use feasible exposure controls, including one or a combination of elimination, substitution, engineering controls, and administrative controls, prior to requiring the use of PPE (*i.e.,* respirators or gloves) as a means of controlling exposures below EPA's interim ECEL and/or prevent direct dermal contact with TCE for all potentially exposed persons, in accordance with the hierarchy of controls (Ref. 88). As this rule finalizes phaseout or time-limited exemption before prohibition, EPA encourages owners and operators to thoroughly investigate and implement elimination, substitution, and available engineering controls during the phase-out. If an owner or operator chooses to replace TCE with a substitute, EPA recommends careful review of the available hazard and exposure information on the potential substitutes to avoid a substitute chemical that might later be found to present an unreasonable risk of injury to health or the environment or be subject to regulation (sometimes referred to as a ''regrettable substitution''). EPA expects that, for conditions of use for which EPA is finalizing a WCPP, compliance at most workplaces would be part of an established industrial hygiene program that aligns with the hierarchy of controls.

EPA is finalizing the requirement that regulated entities use the hierarchy of controls, instituting one or a combination of controls to the extent feasible, and supplement such protections using PPE, where necessary, including respirators for potentially exposed persons at risk of inhalation exposure above the interim ECEL. If efforts of elimination, substitution, engineering controls, and administrative controls are not sufficient to reduce exposures to or below the interim ECEL for all potentially exposed persons in the workplace, EPA requires that the

owner or operator use feasible controls to reduce TCE concentrations in the workplace to the lowest levels achievable and supplement these controls with respiratory protection and PPE as needed to achieve the interim ECEL before potentially exposed persons enter a regulated area. During the phase-out period, EPA encourages investment in elimination and substitution along with the use of readily available engineering controls. In cases where respiratory PPE is necessary to supplement feasible controls, EPA requires that the owner or operator provide potentially exposed persons reasonably likely to be exposed to TCE by inhalation to concentrations above the interim ECEL with respirators affording sufficient protection against inhalation risk and appropriate training on the proper use of such respirators, to ensure that their exposures do not exceed the interim ECEL, as described in this Unit. Furthermore, EPA also requires that the owner or operator document their efforts in using elimination, substitution, engineering controls, and administrative controls to reduce exposure to or below the interim ECEL in an exposure control plan.

EPA is finalizing its requirement that, no later than December 18, 2025, the owner or operator include and document in the exposure control plan or through any existing documentation of the facility's safety and health program developed as part of meeting OSHA requirements or other safety and health standards, the following:

- Identification in the exposure control plan of available exposure controls and rationale for using or not using available exposure controls in the following sequence (*i.e.,* elimination and substitution, then engineering controls and administrative controls) to reduce exposures in the workplace to either at or below the interim ECEL or to the lowest level achievable, and the exposure controls selected based on feasibility, effectiveness, and other relevant considerations;
- For each exposure control considered, exposure controls selected based on feasibility, effectiveness, and other relevant considerations;
- A description of actions the owner or operator must take to implement exposure controls selected, including proper installation, regular inspections, maintenance, training, or other steps taken;
- A description of each regulated area, how they are demarcated, and persons authorized to enter the regulated areas;
- A description of activities conducted by the owner or operator to review and update the exposure control plan to ensure effectiveness of the exposure controls, identify any necessary updates to the exposure controls, and confirm that all persons are properly implementing the exposure controls; and
- An explanation of the procedures for responding to any change that may reasonably be expected to introduce additional sources of exposure to TCE, or otherwise result in increased exposure to TCE, including procedures for implementing corrective actions to mitigate exposure to TCE.

Under this final rule, owners or operators are prohibited from using rotating work schedules to comply with the interim ECEL 8-hour TWA, in alignment with certain elements of existing OSHA's standards for toxic and hazardous substances under 29 CFR part 1910, subpart Z. Owners or operators must maintain the effectiveness of any engineering controls, administrative controls, or work practices instituted as part of the exposure control plan. They must also review and update the exposure control plan as necessary, but at least every five years, to reflect any significant changes in the status of the owner or operator's approach to compliance with the exposure control requirements. EPA intends that the exposure control plan identify the *available* exposure controls and, for the exposure controls not selected, document the efforts identifying why these are not feasible, not effective, or otherwise not implemented. For entities for which significant amounts of time are needed to verify suitability of alternatives or procure funds or authorization for additional engineering controls, for example, EPA expects that as those controls become available the exposure control plan would be updated accordingly. EPA requires that the exposure control plan be revisited under certain conditions and encourages updates as more sophisticated controls are available.

This final rule requires owners or operators to make the exposure control plan and associated records, including interim ECEL exposure monitoring records, interim ECEL compliance records, and workplace participation records, available to potentially exposed persons and their designated representatives. Owners or operators must notify potentially exposed persons and their designated representatives of the availability of the exposure control plan and associated records within 30 days of the date that the exposure control plan is completed and at least annually thereafter. The notice of the availability of the plan and associated records must be provided in plain language writing to each potentially exposed person in a language that the person understands or posted in an appropriate and accessible location outside the regulated area with an English-language version and a non-English version representing the language of the largest group of workers who do not read English. This final rule also requires the owner or operator to provide the exposure control plan and associated records at a reasonable time, place, and manner to a potentially exposed person or their designated representative upon request. As explained in Unit III.A.4., if the owner or operator is unable to provide the specified records within 15 working days, the owner or operator must inform the potentially exposed person or designated representative requesting the record within 15 working days that reason for the delay and the earliest date when the record can be made available.

7. Personal Protective Equipment (PPE)

Where elimination, substitution, engineering, and administrative controls are not feasible or sufficiently protective to reduce the air concentration to or below the interim ECEL, EPA is finalizing as proposed, with slight modifications to improve clarity or for greater consistency with OSHA's regulations, to require owners and operators to provide PPE, including respiratory protection and dermal protection selected in accordance with the guidelines described in Units IV.C.7.a. and b. and to implement a PPE program described in this Unit. This Unit includes a description of the PPE Program, including required PPE as it relates to respiratory protection, required PPE as it relates to dermal protection, and other requirements such as additional training for respirators and recordkeeping to support implementation of a PPE program. Compliance with these requirements must occur no later than September 15, 2025, or, for requirements related to respiratory protection, within 90 days after the receipt of any exposure monitoring that indicates exposures exceeding the interim ECEL.

a. Respiratory Protection

Where elimination, substitution, engineering, and administrative controls are not feasible or sufficiently protective to reduce the air concentration to or below the interim ECEL, or if inhalation exposure above the interim ECEL is still reasonably likely, EPA is finalizing, with slight modification from the proposed rule, minimum respiratory PPE requirements based on an owner or

operator's most recent measured air concentration for one or more potentially exposed persons and the level of PPE needed to reduce exposure to or below the interim ECEL. In those circumstances, EPA is finalizing requirements for a respiratory protection PPE program with worksite-specific procedures and elements for required respirator use. Owners or operators must develop and administer a written respiratory protection program in accordance with OSHA's respiratory protection standard under 29 CFR 1910.134(c)(1), (c)(3), and (c)(4). EPA is finalizing requirements that owners and operators provide training to all persons required to use respiratory protection consistent with 29 CFR 1910.134(k) prior to or at the time of initial assignment to a job involving potential exposure to TCE. Owners and operators must retrain all persons required to use PPE at least annually, or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use PPE, or when changes in the workplace or in PPE to be used render the previous training obsolete.

EPA is finalizing requirements that each owner or operator supply a respirator, selected in accordance with this Unit, to each person who enters a regulated area after September 15, 2025, or within 90 days after the receipt of any exposure monitoring that indicates exposures exceeding the interim ECEL, and thereafter must ensure that all persons within the regulated area are using the provided respirators whenever TCE exposures exceed or can reasonably be expected to exceed the interim ECEL.

EPA is also finalizing requirements that owners or operators who are required to administer a respiratory protection PPE program must supply a respirator selected based on a medical evaluation consistent with the requirements of 29 CFR 1910.134(e). If a potentially exposed person cannot use a negative-pressure respirator, then the owner or operator must provide that person with an alternative respirator. The alternative respirator must have less breathing resistance than the negative-pressure respirator and provide equivalent or greater protection. If the person is unable to use an alternative respirator, then the person must not be permitted to enter the regulated area. Additionally, EPA is requiring owners and operators to select respiratory protection that properly fits each affected person and communicate respirator selections to each affected person in accordance with the requirements of 29 CFR 1910.134(f). Consistent with requirements of 29 CFR 1910.134(g) through (j), EPA is requiring owners and operators to provide, ensure use of, and maintain (in a sanitary, reliable, and undamaged condition), respiratory protection that is of safe design and construction.

EPA is finalizing the requirements to establish minimum respiratory protection requirements, such that any respirator affording a higher degree of protection than the following requirements may be used. In instances where respiratory protection is appropriate, NIOSH Approved® equipment must be used. NIOSH Approved is a certification mark of the U.S. Department of Health and Human Services (HHS) registered in the United States and several international jurisdictions. EPA is finalizing the following requirements for respiratory protection, based on the most recent exposure monitoring concentrations results measured as an 8-hour TWA that exceed the interim ECEL (0.2 ppm):

- If the measured exposure concentration is at or below 0.2 ppm: no respiratory protection is required.
- If the measured exposure concentration is above 0.2 ppm and less than or equal to 2 ppm (10 times interim ECEL): Any NIOSH Approved air-purifying half mask respirator equipped with organic vapor cartridges or canisters; or any NIOSH Approved Supplied-Air Respirator (SAR) or Airline Respirator operated in demand mode equipped with a half mask; or any NIOSH Approved Self-Contained Breathing Apparatus (SCBA) in a demand mode equipped with a half mask [APF 10].
- If the measured exposure concentration is above 2 ppm and less than or equal to 5 ppm (25 times interim ECEL): Any NIOSH Approved Powered Air-Purifying Respirator (PAPR) equipped with a loose-fitting facepiece or hood/helmet equipped with organic vapor cartridges or canisters; or any NIOSH Approved SAR or Airline Respirator in a continuous-flow mode equipped with a loose-fitting facepiece or helmet/hood [APF 25].
- If the measured exposure concentration is above 5 ppm and less than or equal to 10 ppm (50 times interim ECEL): Any NIOSH Approved air-purifying full facepiece respirator equipped with organic vapor cartridges or canisters; any NIOSH Approved PAPR with a half mask equipped with organic vapor cartridges or canisters; any NIOSH Approved SAR or Airline Respirator in a continuous flow mode equipped with a half mask; any NIOSH Approved SAR or Airline Respirator operated in a pressure-demand or other positive-pressure mode with a half mask; or any NIOSH Approved SCBA in demand-mode equipped with a full facepiece or helmet/hood [APF 50].
- If the measured exposure concentration is above 10 ppm and less than or equal to 200 ppm (1,000 times interim ECEL): Any NIOSH Approved PAPR equipped with a full facepiece equipped with organic vapor cartridges or canisters; any NIOSH Approved SAR or Airline Respirator in a continuous-flow mode equipped with full facepiece; any NIOSH Approved SAR or Airline Respirator in pressure-demand or other positive-pressure mode equipped with a full facepiece and an auxiliary self-contained air supply; or any NIOSH Approved SAR or Airline Respirator in a continuous-flow mode equipped with a helmet or hood and has been tested to demonstrate performance at a level of protection of APF 1,000 or greater. [APF 1,000].
- If the measured exposure concentration is greater than 200 ppm (1,000+ times interim ECEL) or the concentration is unknown: Any NIOSH Approved SAR equipped with a full facepiece and operated in a pressure demand or other positive pressure mode in combination with an auxiliary self-contained breathing apparatus operated in a pressure demand or other positive pressure mode [APF 1000+]; or any NIOSH Approved SCBA in a pressure-demand or other positive-pressure mode equipped with a full facepiece or helmet/hood [APF 10,000].
- If the exposure concentration is unknown: Any NIOSH Approved combination supplied air respirator equipped with a full facepiece and operated in pressure demand or other positive pressure mode with an auxiliary self-contained air supply; or any NIOSH Approved SCBA operated in pressure demand or other positive pressure mode and equipped with a full facepiece or hood/helmet [APF 1000+].

Additionally, EPA is finalizing requirements that owners or operators select and provide respirators in accordance with the requirements of 29 CFR 1910.134(d)(1)(iv) and with consideration of workplace and user factors that affect respirator performance and reliability. EPA is requiring that the owner or operator must ensure that all filters, cartridges, and canisters used in the workplace are labeled and color coded per NIOSH requirements and that the label is not removed and remains legible. Consistent with 29 CFR 1910.134(d)(3)(iii), EPA is requiring either the use of NIOSH Approved respirators with an end-of-life service indicator for the contaminant, in this case TCE, or implementation of a

change schedule for canisters and cartridges that ensures that they are changed before the end of their service life. EPA is also requiring owners and operators to ensure that respirators are used in compliance with the terms of the respirator's NIOSH approval.

EPA is finalizing requirements that owners and operators must conduct regular evaluations of the workplace, including consultations with potentially exposed persons using respiratory protection, consistent with the requirements of 29 CFR 1910.134(l), to ensure that the provisions of the written respiratory protection program described in this Unit are being effectively implemented.

EPA is finalizing that owners and operators document respiratory protection used and PPE program implementation. EPA is finalizing requirements that owners and operators document in the exposure control plan or other documentation of the facility's safety and health program information relevant to the respiratory program, including records on the name, workplace address, work shift, job classification, work area, and type of respirator worn (if any) by each potentially exposed person, maintenance, and fit-testing, as described in 29 CFR 1910.134(f), and training in accordance with 29 CFR 1910.132(f) and 29 CFR 1910.134(k).

b. Dermal Protection

This final rule requires owners and operators to provide and require the use of chemically resistant gloves by potentially exposed persons for tasks where TCE is present and dermal exposure can be expected to occur under the conditions of use. Compliance with this requirement must occur no later than September 15, 2025. Owners and operators should also consider other glove factors, such as compatibility of multiple chemicals used simultaneously while wearing TCE-resistant gloves or with glove liners, permeation, degree of dexterity required to perform a task, and temperature, as identified in the Hand Protection section of OSHA's Personal Protection Equipment Guidance (Ref. 89), when selecting appropriate PPE. Owners and operators can select gloves that have been tested in accordance with the American Society for Testing Material F739 ''Standard Test Method for Permeation of Liquids and Gases through Protective Clothing Materials under Conditions of Continuous Contact.''

Owners and operators must provide dermal PPE that is of safe design and construction for the work to be performed and that properly fits each potentially exposed person who is required to use dermal PPE. Owners and operators must also communicate dermal PPE selections to each affected person and ensure that each potentially exposed person who is required by this unit to wear PPE uses and maintains PPE in a sanitary, reliable, and undamaged condition. Activity-specific training (*e.g.,* glove selection (type, material), expected duration of glove effectiveness, actions to take when glove integrity is compromised, storage requirements, procedure for glove removal and disposal, chemical hazards) must be provided in accordance with 29 CFR 1910.132(f).

8. Additional Finalized Requirements

a. Workplace Information and Training

EPA is also finalizing its requirements to implement a training program in alignment with the OSHA Hazard Communication Standard (29 CFR 1910.1200) and chemical-specific standards, such as the OSHA General Industry Standard for Methylene Chloride (29 CFR 1910.1052). To ensure that potentially exposed persons in the workplace are informed of the hazards associated with TCE exposure, EPA is finalizing as proposed with slight modification to require that owners or operators of workplaces subject to the WCPP institute a training and information program by September 15, 2025 for potentially exposed persons and assure their participation in the program. For purposes of workplace information and training, owners and operators are only required to train potentially exposed persons that are expected to be present in the regulated area or to directly handle TCE or handle equipment or materials on which TCE may present.

As part of the training requirement, the owner or operator is required to provide information and comprehensive training in an understandable manner (*i.e.,* plain language), considering factors such as the skills required to perform the work activity and the existing skill level of the staff performing the work, and in multiple languages as appropriate (*e.g.,* based on languages spoken by potentially exposed persons) to potentially exposed persons. This training and information must be provided prior to or at the time of initial assignment to a job involving potential exposure to TCE. Owners and operators are required to provide information and training, as referenced in the OSHA Hazard Communication Standard, to all potentially exposed persons that includes:

- The requirements of the TCE WCPP and how to access or obtain a copy of the requirements of the WCPP, including but not limited to the exposure control plan, monitoring requirements, and PPE program;
- The quantity, location, manner of use, release, and storage of TCE and the specific operations in the workplace that could result in TCE exposure, particularly noting where each regulated area is located;
- Principles of safe use and handling of TCE in the workplace, including specific measures the owner or operator has implemented to reduce inhalation exposure at or below the interim ECEL or prevent dermal contact with TCE, such as work practices and PPE used;
- The methods and observations that may be used to detect the presence or release of TCE in the workplace (such as monitoring conducted by the owner or operator, continuous monitoring devices, visual appearance, or odor of TCE when being released, etc.); and
- The acute and chronic health hazards of TCE as detailed on relevant SDSs.

In addition to providing training at the time of initial assignment to a job involving potential exposure to TCE, owners and operators subject to the TCE WCPP are required to re-train each potentially exposed person annually to ensure they understand the principles of safe use and handling of TCE in the workplace. EPA is finalizing its requirements that owners and update the training as necessary whenever there are changes in the workplace, such as new tasks or modifications of tasks, in particular, whenever there are changes in the workplace that increase exposure to TCE or where potentially exposed persons' exposure to TCE can reasonably be expected to exceed the action level or increase the potential for direct dermal contact with TCE. To support compliance, EPA is finalizing as proposed that each owner or operator of a workplace subject to the WCPP is required to provide to the EPA, upon request, all available materials related to workplace information and training.

b. Workplace Participation

EPA encourages owners and operators to consult with potentially exposed persons and their designated representatives on the development and implementation of exposure control plans and PPE/respirator programs. EPA is finalizing the requirement that owners and operators provide potentially exposed persons and their designated representatives regular access to the exposure control plans, exposure monitoring records, and PPE

program implementation. To ensure compliance with workplace participation, EPA is finalizing its requirement that the owner or operator document the notice to and ability of any potentially exposed person who may reasonably be affected by TCE exposure to readily access the exposure control plans, facility exposure monitoring records, PPE program implementation, or any other information relevant to TCE exposure in the workplace.

c. Notification of Monitoring Results

EPA is finalizing the requirement that the owner or operator must, within 15 working days after receipt of the results of any exposure monitoring, notify each person whose exposures are monitored or who is part of a monitored exposure group and their designated representatives in writing, in plain language, either individually to each potentially exposed person or by posting the information in an appropriate and accessible location, such as public spaces or common areas, for potentially exposed persons outside of the regulated area. The notice is required to identify the exposure monitoring results, the interim ECEL and interim ECEL action level, statement of whether the monitored airborne concentration of TCE exceeds the interim ECEL and the interim ECEL action level, and any corresponding respiratory protection required. If the interim ECEL is exceeded, the notice must also include a description of the actions taken by the owner or operator to reduce inhalation exposures to or below the interim ECEL. The notice must also include the quantity, location, and manner of TCE use at the time of monitoring. The notice must also include identified releases of TCE. The notice must be provided in multiple languages if necessary. Specifically, notice must be provided in a language that each potentially exposed person understands, or posted in a non-English language version representing the language of the largest group of workers who cannot readily comprehend or read English).

d. Recordkeeping

For owners and operators to demonstrate compliance with the WCPP provisions, EPA is requiring that owners and operators must retain compliance records for five years (although this requirement does not supplant any longer recordkeeping retention time periods such as those required under 29 CFR 1910.1020, or other applicable regulations). EPA is requiring the owner or operator to retain records of:

- Exposure control plan;
- Regulated areas and authorized personnel;
- Facility exposure monitoring records;
- Notifications of exposure monitoring results;
- PPE and respiratory protection used and program implementation; and
- Information and training provided by the owner or operator to each potentially exposed person prior to or at the time of initial assignment to a job involving potential exposure to TCE.

EPA emphasizes that all records required to be maintained can be kept in the most administratively convenient form: electronic record form or paper form. The owner or operator is required to document training or re-training of any potentially exposed person as necessary to ensure that, in the event of monitoring results that indicate exposure or possible exposures above the interim ECEL action level, the potentially exposed person has demonstrated understanding of how to use and handle TCE and how to appropriately use required PPE.

D. Prescriptive Controls for Energized Electrical Cleaner

In contrast to the non-prescriptive requirements of the WCPP, where regulated entities would have flexibility to select controls in accordance with the hierarchy of controls to comply with the parameters outlined in Unit IV.C., EPA has found it appropriate for certain activities in certain circumstances to allow owners and operators the choice of either complying with the WCPP or require complying with specific prescriptive controls for certain occupational conditions of use. EPA is finalizing specific prescriptive controls for the industrial and commercial use of TCE in energized electrical cleaner. The rationale for these changes, after consideration of public comments, is in Unit III.C.1. This Unit provides a description of the condition of use subject to specific prescriptive controls, the specific prescriptive control requirements, and the compliance timeframes for the requirements.

Considering the time needed to transition away from this use of TCE, to protect health from inhalation and dermal exposures to TCE from the industrial and commercial use of TCE-containing energized electrical cleaners, which is a sub-use of the industrial and commercial use as an aerosol spray degreaser/cleaner, EPA is requiring owners and operators to comply with either (i) specific prescriptive controls outlined in this Unit, including dermal PPE and respiratory protection, or (ii) implementation of the WCPP outlined in Unit IV.C. As described in Unit III.C.1., EPA's workplace requirements to reduce exposures to TCE in the timeframe before prohibitions for energized electrical cleaner are consistent to the extent possible with existing regulations and best practices for work in electrical spaces. EPA acknowledges the existing OSHA requirements for electrical protective equipment under 29 CFR 1910.137 and determined the requirements in this Unit do not interfere with a potentially exposed person's ability to safely use electrical protective equipment, such as rubber insulating gloves and rubber insulating sleeves, as required under OSHA.

1. Applicability

The industrial and commercial use of TCE in energized electrical cleaner refers to the use of TCE in a product to clean and/or degrease electrical equipment, where cleaning and/or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor (*i.e.,* energized equipment use only). In this final rule, energized electrical cleaner does not include general purpose degreaser, electrical cleaner, or electronic cleaner, for example for use in motorized vehicle maintenance and their parts, which is subject to the prohibitions described in Unit IV.B.1.

2. Workplace Requirements for Energized Electrical Cleaner

EPA is requiring that owners or operators must either implement (i) specific prescriptive controls that provide dermal PPE and respiratory protection or (ii) implement the WCPP for industrial and commercial use in energized electrical cleaner. Owners and operators must maintain a statement regarding whether the business is complying with the specified prescriptive controls or with the WCPP.

a. Prescriptive Controls

i. Dermal Protection

This rule requires dermal PPE, including impermeable gloves, in combination with comprehensive training for each potentially exposed person who uses TCE in energized electrical cleaner. For dermal PPE, EPA is requiring that each owner or operator comply with the requirements outlined in Unit IV.C.7.b. for selection of dermal PPE and training for all potentially exposed persons.

ii. Respiratory Protection

This final rule requires the use of specific respiratory protection, in combination with comprehensive training, for use of energized electrical cleaner containing TCE. Specifically, EPA is requiring owners or operators to provide to potentially exposed persons, and potentially exposed persons to use, the following: any NIOSH Approved air-purifying full facepiece respirator equipped with organic vapor cartridges or canisters; any NIOSH Approved PAPR with a half mask equipped with organic vapor cartridges or canisters; any NIOSH Approved SAR or Airline Respirator in a continuous flow mode equipped with a half mask; any NIOSH Approved SAR or Airline Respirator operated in a pressure-demand or other positive-pressure mode with a half mask; or any NIOSH Approved SCBA in demand-mode equipped with a full facepiece or helmet/hood [APF 50]; or any NIOSH Approved respirator affording a higher degree of protection. In providing the specified respirators and training, EPA is requiring owners or operators to administer a PPE program with procedures and elements for required respirator use as described in Unit IV.C.7.a., for proper use, maintenance, fit-testing, medical evaluation, and training. EPA is requiring that the owner or operator must ensure that all filters, cartridges, and canisters used in the workplace are labeled and color coded per NIOSH requirements and that the label is not removed and remains legible.

b. WCPP

EPA understands that there may be instances where a performance-based standard is more appropriate to reduce exposures from the industrial and commercial use of TCE in energized electrical cleaner, instead of the specific prescriptive dermal and respiratory protection requirements described in this Unit. For example, the WCPP may be preferred by owners or operators that regularly use TCE to clean energized electrical equipment onsite at their facility or by owners or operators that are implementing the WCPP at their facility for another condition of use of TCE. In these instances, the final rule permits owners or operators to comply with the WCPP requirements, including the interim ECEL, direct dermal contact controls, and ancillary provisions, outlined in Unit IV.B, instead of the prescriptive controls described in this Unit.

c. Recordkeeping

Owners and operators subject to the energized electrical cleaner requirements must maintain a statement regarding whether the owner or operator is complying with the prescriptive control requirements or the WCPP requirements. They must also maintain records of the dermal and respiratory protection used by each potentially exposed person and of PPE program implementation or the WCPP records described in Unit IV.C.8.d.

Distributors of TCE, including TCE containing products, for use in energized electrical cleaner must retain sale records, including the name of the purchaser, sale date, and quantity sold.

E. Wastewater Worker Protection Provisions

1. Applicability

The disposal of TCE to wastewater refers to the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works, which includes the mixing of TCE with wastewater and the discharge of TCE-contaminated wastewater pursuant to a NPDES permit. EPA is finalizing distinct workplace protection provisions, separate from the WCPP described in Unit IV.C., for owners and operators of facilities or sites involved in the industrial treatment and pre-treatment of TCE wastewater at cleanup sites, that fall under the 50-year TSCA section 6(g) exemption for disposal of TCE for the purposes of facilitating cleanup projects of TCE-contaminated groundwater and other wastewater. EPA is also finalizing distinct workplace protection provisions for owners and operators of publicly owned treatment works who receive wastewater associated with TCE disposal for: industrial and commercial use as a processing aid for lithium battery separator manufacturing, industrial and commercial use of TCE as a processing aid for lead-acid battery separator manufacturing, industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet material manufacturing, and facilitating cleanup projects of TCE-contaminated groundwater and other wastewater. Owners and operators of facilities or sites involved in the industrial treatment and pre-treatment sub-categories of TCE wastewater disposal for industrial and commercial conditions of use are not included within these distinct wastewater provisions and are subject to the WCPP described in Unit IV.C. For the purposes of this rulemaking, EPA does not consider wastewater to be a product that is eligible for the regulatory threshold discussed in Units III.D.1 and IV.A. As discussed in Unit III.D.1., EPA finds that a regulatory threshold is necessary to avoid impacts on numerous supply chains, particularly chlorinated organic products. These considerations are not applicable to wastewater disposal.

2. Workplace Requirements for Facilitating Cleanup Projects of TCE-Contaminated Groundwater and Other Wastewater

This final rule requires that owners and operators of facilities or sites involved in disposal of TCE-containing wastewater for the purposes of cleanup projects of TCE-contaminated water and groundwater follow the requirements set forth in 29 CFR 1910.120(c)(5) and (h), known as the Hazardous Waste Operations and Emergency Response standard, with notable modifications: this rule requires that, for those provisions in 29 CFR 1910.120 that reference a PEL, owners and operators will instead comply with the TSCA interim ECEL of 0.2ppm. As explained in Unit III.A.2., owners and operators of these cleanup sites must ensure that potentially exposed persons involved with the activity of removing the wastewater from the location where it was found and treating the removed wastewater on-site are protected to the interim ECEL level of 0.2 ppm and protected from dermal contact with TCE-containing wastewater.

3. Workplace Requirements for Workers at Publicly Owned Treatment Works

To protect workers and facilitate successful implementation, EPA is finalizing the requirement that POTWs must either (i) implement the WCPP or (ii) where there is a reasonable possibility of the presence of TCE screen the wastewater they receive, in a manner consistent with the approach outlined in EPA's 1992 ''Guidance to Protect POTW Workers from Toxic and Reactive Gases and Vapors'' (Ref. 52). Owners and operators must compare the concentration of TCE in wastewater to a screening level that EPA calculated as described in section III.A.2. EPA is finalizing a provision that if the wastewater concentration is equal to or less than 0.00284 mg/L of TCE, the POTW where there is a reasonable possibility of the presence of TCE can assume that the concentration of TCE in air that results from TCE volatilization from wastewater is equal to or less than the interim ECEL. If a POTW's wastewater screening detects TCE at concentration greater than 0.00284 mg/L of TCE then EPA is requiring that owners and operators comply with the

WCPP, as described in Unit IV.C., except that owners and operators do not have to perform initial air monitoring.

F. Other Requirements

1. Recordkeeping

EPA is finalizing as proposed the requirement that manufacturers, processors, industrial and commercial users, and distributors maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with restrictions and other provisions of this final regulation; and that they maintain such records for a period of five years from the date the record is generated. This requirement begins on February 18, 2025. For enforcement purposes, EPA will have access to such businesses records plus additional records required under 40 CFR 751.323. Recordkeeping requirements ensure that owners or operators can demonstrate compliance with the regulations if necessary.

2. Downstream Notification

EPA is finalizing as proposed the requirements that manufacturers (including importers), processors, and distributors of TCE and TCE-containing products provide downstream notification of certain prohibitions through SDSs by adding the language set forth in § 751.321(c) to sections 1(c) and 15 of the SDS. To provide adequate time to update the SDS and ensure that all products in the supply chain include the revised SDS, EPA's final rule requires manufacturers revise their SDS within 60 days of publication and processors and distributors revise their SDS within 180 days of publication of the final rule.

The intention of downstream notification is to spread awareness throughout the supply chain of the restrictions on TCE under TSCA and to provide information to commercial end-users about the timeframes for use until prohibition.

G. TSCA Section 6(g) Exemptions

Under TSCA section 6(g)(1), EPA may grant an exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use of a chemical substance or mixture if the Agency makes one of three findings. TSCA section 6(g)(1)(A) permits such an exemption if the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available. Under TSCA section 6(g)(1)(B), EPA must find that compliance with the requirement would significantly disrupt the national economy, national security, or critical infrastructure to provide an exemption. Finally, TSCA section 6(g)(1)(C) allows for an exemption based on an EPA finding that the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety. This unit presents the TSCA section 6(g) exemptions EPA is finalizing in this rule. See Units V.A.3. and V.B.3. of the 2023 TCE proposed rule for an analysis of the need for such exemptions pursuant to TSCA section 6(g)(2). EPA notes that EPA is able to extend or modify TSCA section 6(g) exemptions by rulemaking as appropriate but is unable to incorporate automatic extensions to TSCA section 6(g) exemptions. Given the nature of Agency rulemaking, EPA notes that such requests to extend or modify a TSCA section 6(g) exemption be submitted to EPA several years in advance of the expiration of the exemption.

Unless otherwise specified, for each condition of use subject to a time-limited TSCA section 6(g) exemption in this final rule, EPA is requiring owners and operators of the location where such use occurs to comply with the WCPP provisions described in Unit IV.C. and the recordkeeping provisions described in Unit IV.F. Additionally, for each condition of use subject to a time-limited TSCA section 6(g) exemption, EPA is requiring manufacturers (including importers) and processors of TCE for such use to comply with the WCPP provisions described in Unit IV.C. until the prohibition compliance date. The prohibition compliance date for the manufacture (including import), processing, and distribution in commerce for each condition of use subject to a time-limited TSCA section 6(g) exemption, except for disposal, is the same as the expiration date of the exemption for that use.

1. 7-Year Exemption for Industrial and Commercial Use of TCE in Closed-Loop and Open-Top Batch Vapor Degreasing for Essential Aerospace Parts and Components and Narrow Tubing Used in Medical Devices

EPA is finalizing a seven-year TSCA section 6(g)(1)(B) exemption from the prohibition for the industrial and commercial use of TCE in batch vapor degreasing for essential aerospace parts and components and a seven-year TSCA section 6(g)(1)(A) exemption from the prohibition for the industrial and commercial use of TCE in batch vapor degreasing for narrow tubing used in medical devices. As described in Unit V.B.3. in the proposed rule, EPA's primary alternative regulatory action described 7-year TSCA section 6(g) exemptions from prohibition for industrial and commercial use of TCE in batch vapor degreasing for essential aerospace parts and components and narrow tubing used in medical devices. EPA is finalizing these exemptions. The specific condition for these exemptions is that TCE can only be used for batch vapor degreasing of: (1) essential aerospace parts and components (including rayon fabric) where cleaning alternatives present technical feasibility or performance challenges to meet specifications from other Federal agencies or other long-standing design specifications that are included in existing contracts, or (2) narrow tubing for medical devices.

2. 7-Year Exemption for Industrial and Commercial Use of TCE as a Solvent in Closed-Loop Batch Vapor Degreasing Necessary for Rocket Engine Cleaning by Federal Agencies and Their Contractors

EPA is finalizing as proposed a 7-year TSCA section 6(g)(1)(B) exemption from the prohibition on the industrial and commercial use of TCE as a solvent in closed-loop vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors, and the manufacture (including import), processing, and distribution in commerce of TCE for this use.

3. 10-Year Exemption for TCE for Certain Industrial and Commercial Uses for Vessels of the Armed Forces and Their Systems

EPA is finalizing a 10-year TSCA section 6(g)(1)(B) exemption from the prohibition on industrial and commercial use of TCE for the industrial and commercial use of TCE for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems: as potting compounds for naval electronic systems and equipment; sealing compounds for high and ultra-high vacuum systems; bonding compounds for materials testing and maintenance of underwater systems and bonding of nonmetallic materials; and cleaning agents to satisfy cleaning requirements (which includes degreasing using wipes, sprays, solvents, and vapor degreasing) for: materials and components required for military ordinance testing; temporary resin repairs in vessel spaces where welding is not authorized; ensuring polyurethane adhesion for electronic systems and equipment repair and installation of elastomeric materials; various naval combat systems, radars,

sensors, equipment; fabrication and prototyping processes to remove coolant and other residue from machine parts; machined part fabrications for naval systems; installation of topside rubber tile material aboard vessels; and vapor degreasing required for substrate surface preparation prior to electroplating processes. EPA is finalizing this TSCA section 6(g)(1)(B) exemption as proposed, with the modification of the term ''DoD naval vessels'' to ''vessels of the Armed Forces'' to make it clear that Coast Guard vessels are included in this exemption because they serve similar national security interests.

4. 10-Year Exemption for the Emergency Use of TCE in Furtherance of NASA's Mission

For the reasons discussed in Unit V.A.3.a.vi. of the proposed rule, EPA is finalizing as proposed a 10-year TSCA section 6(g)(1)(A) exemption for emergency use of TCE in furtherance of NASA's mission for the following specific conditions of use:

(1) Industrial and commercial use as solvent for open-top or closed-loop batch vapor degreasing;

(2) Industrial and commercial use as a solvent for cold cleaning;

(3) Industrial and commercial use as a solvent for aerosol spray degreaser/cleaner and mold release;

(4) Industrial and commercial use as a lubricant and grease in tap and die fluid;

(5) Industrial and commercial use as a lubricant and grease in penetrating lubricant;

(6) Industrial and commercial use as an adhesive and sealant in solvent-based adhesives and sealants;

(7) Industrial and commercial use as a functional fluid in heat exchange fluid;

(8) Industrial and commercial use in corrosion inhibitors and anti-scaling agents;

(9) Industrial and commercial use of TCE as a processing aid; and

(10) Manufacturing (including importing) and processing of TCE for the industrial and commercial uses listed in (1) through (9).

EPA is also finalizing as proposed the inclusion of additional requirements as part of the exemption, pursuant to TSCA section 6(g)(4), including required notification and controls for exposure, to the extent feasible: (1) NASA and its contractors must provide notice to the EPA Administrator of each instance of emergency use within 15 days; and (2) NASA and its contractors would have to comply with the WCPP to the extent feasible.

EPA is finalizing to require that NASA notify EPA within 15 days of the emergency use. The notification would include a description of the specific use of TCE in the context of one of the conditions of use for which this exemption is being finalized, an explanation of why the use described qualifies as an emergency, and an explanation with regard to the lack of availability of technically and economically feasible alternatives. EPA notes that in the event that sensitive information relating to national security or critical infrastructure is submitted to EPA, the Agency will protect such information in accordance with applicable authorities.

EPA expects NASA and its contractors have the ability to implement a WCPP as described in Unit IV.C. for the identified uses in the context of an emergency. Therefore, EPA is finalizing the requirement that during emergency use, NASA and its contractors must comply with the WCPP to the extent technically feasible in light of the particular emergency.

Under the finalized exemption, NASA and its contractors will still be subject to the general recordkeeping requirements discussed in Unit IV.F.

5. 20-Year Exemption for Industrial and Commercial Use of TCE as a Processing Aid for Lead-Acid Battery Separator Manufacturing

EPA is finalizing a 20-year TSCA section 6(g)(1)(B) exemption from the prohibition on the industrial and commercial use of TCE as a processing aid, specific to battery separator manufacturing for lead-acid batteries. The conditions for the exemption are: (1) The use of TCE is limited to use as a processing aid for lead-acid battery separator manufacturing; and (2) This specific industrial and commercial use of TCE as a processing aid is required to be conducted at industrial facilities using TCE to manufacture lead acid battery separators prior to February 18, 2025.

6. 15-Year Exemption for Industrial and Commercial Use of TCE as a Processing Aid for Specialty Polymeric Microporous Sheet Materials

EPA is finalizing a 15-year TSCA section 6(g)(1)(A) exemption from the prohibition on TCE for the industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet material manufacturing. As described in more detail in Unit III.B.2., while EPA proposed to prohibit industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet materials, EPA's primary alternative regulatory action described a 15-year TSCA section 6(g) exemption from prohibition for this use. EPA received substantiative information in public comments to support the finalization of this exemption, as well as support for 15 years as the appropriate timeframe for this exemption.

The conditions for the exemption are: (1) The use of TCE is limited to use as a processing aid for the manufacturing of specialty polymeric microporous sheet materials; (2) This specific industrial and commercial use of TCE as a processing aid can only be used at industrial facilities in which TCE is already in use to manufacture specialty polymeric microporous sheet materials prior to February 18, 2025.

7. 50-Year Exemption for Laboratory Use of TCE for Essential Laboratory Uses

EPA is finalizing a 50-year TSCA section 6(g)(1)(A) exemption from the prohibition on industrial and commercial use of TCE, for industrial and commercial use of TCE in laboratory use for essential laboratory activities, excluding the testing of asphalt which is subject to a ten-year phase-out as described in Units III.C.3. and IV.B.5. The conditions for the exemption are: (1) The use of TCE is limited to use in an industrial or commercial laboratory for essential laboratory activities, including chemical analysis, chemical synthesis, extracting and purifying other chemicals, dissolving other substances, and research and development for the advancement of cleanup activities, and analytical methods for monitoring related to TCE contamination or exposure monitoring, with the exclusion of laboratory testing for asphalt; and (2) Federal agencies and their contractors are permitted to conduct research and development activities, test and evaluation method activities, and similar laboratory activities, provided the use is essential to the agency's mission.

8. 50-Year Exemption for Disposal of TCE to Industrial Pre-Treatment, Industrial Treatment, or Publicly Owned Treatment Works, for the Purposes of Facilitating Cleanup Projects of TCE-Contaminated Water and Groundwater

EPA is finalizing a 50-year TSCA section 6(g)(1)(A) exemption from the prohibition on disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works for the purposes of cleanup projects of TCE-contaminated water and

groundwater. The conditions for the exemption are: (1) The disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works must only be for the purposes of cleanup projects of TCE-contaminated water and groundwater and is limited to sites undergoing cleanup under CERCLA, RCRA, or other Federal, state, and local government laws, regulations or requirements; and (2) Owners and operators of the cleanup site locations where TCE industrial treatment or pretreatment occurs are required to comply with the wastewater workplace protection requirements described in Unit IV.E.2., and owners and operators of publicly owned treatment works that receive TCE wastewater, are required to comply with the workplace protection requirements described in Unit IV.E.3. Owners and operators of either type of location must comply with the recordkeeping requirements described in Unit IV.F.1. until the expiration of the exemption and the prohibition compliance date. EPA notes that a remediation method would need to be considered one of the previous types of disposal to fall within the condition of use, and if not would be out of scope of this TSCA rule and not subject to the prohibition or other requirements of the rule.

V. TSCA Section 6(c)(2) Considerations

A. Health Effects and the Magnitude of Human Exposure

EPA's analysis of the health effects of TCE and the magnitude of human exposure to TCE are in the 2020 Risk Evaluation for TCE and the 2023 Revised Risk Determination for TCE (Refs. 1, 2). A summary is presented here.

As described in Unit IV. of the 2023 TCE proposed rule, TCE has a large database of human health toxicity data. The 2020 Risk Evaluation for TCE identified several endpoints, such as kidney toxicity, immunotoxicity, or developmental toxicity, and often a single endpoint was examined by multiple studies. For acute exposures, EPA identified non-cancer effects (developmental toxicity and immunosuppression). For chronic exposures, EPA identified non-cancer effects (liver toxicity, kidney toxicity, neurotoxicity, autoimmunity, reproductive toxicity, and developmental toxicity) as well as cancer (liver, kidney, and non-Hodgkin's lymphoma), with kidney cancer identified as acting through a mutagenic mode of action (Ref. 1). The 2020 Risk Evaluation for TCE contains quantitative risk estimates using several points of departure (PODs), including immunotoxicity endpoints as well as the more sensitive developmental toxicity endpoints, specifically fetal cardiac defects, and both demonstrate that TCE presents risk.

Additionally, in developing the 2020 Risk Evaluation for TCE, EPA analyzed the reasonably available information to ascertain whether some human subpopulations may have greater exposure or greater susceptibility than the general population to the hazard posed by the chemical substance. Factors affecting susceptibility examined in the reasonably available studies on TCE include lifestage, sex, genetic polymorphisms, race/ethnicity, preexisting health status, lifestyle factors, and nutrition status. Groups of individuals for which one or several of these factors apply may be considered PESS (Ref. 1).

Because TSCA section 6(c)(2)(B) directs EPA to factor in, to the extent practicable, the health effects of TCE under TSCA section 6(c)(2)(A) when selecting among options, TSCA section 6(c) thereby provides EPA with the flexibility to tailor the regulatory restrictions to account for particular health effects identified in the underlying risk evaluation. With this consideration, EPA found that, in some cases, a regulatory option that could reduce exposures such that they would achieve the benchmark margin of exposure for the most sensitive non-cancer endpoint (developmental toxicity) would address any risk for other non-cancer endpoints. Older pregnant workers and ONUs, who may be especially susceptible to TCE-induced cardiac defects in their developing fetus, are classified as a PESS, and the associated POD and risk estimates were included in the 2020 Risk Evaluation in consideration of PESS groups. EPA has carefully considered the health effects of TCE on pregnant workers and ONUs as part of the Agency's requirements and prohibitions. In order for this rulemaking to appropriately address risk to all workers and ONUs exposed to TCE through occupational conditions of use, EPA has factored in consideration of additional health effects applicable to PESS, including older pregnant workers and ONUs (the group identified as most susceptible to fetal cardiac defects) pursuant to TSCA section 6(c)(2).

In the risk characterization section of the 2020 Risk Evaluation for TCE, EPA acknowledged that fetal cardiac defects are an acute, non-cancer endpoint of concern, particularly for older pregnant women, while also acknowledging uncertainty surrounding the use of this endpoint to inform the determination of whether TCE presents unreasonable risk of injury to health for all affected human populations. In the 2020 Risk Evaluation for TCE, EPA presented the Agency's findings with respect to different endpoints and characterized the immunotoxicity endpoints as the ''best overall'' non-cancer endpoints for use in the risk conclusions and risk determination. The endpoints were characterized in this way precisely because of the quantitative uncertainties surrounding the use of the fetal cardiac defects endpoint and other considerations. Further, as noted in Unit II.D.1. of the 2023 TCE proposed rule, EPA received numerous comments on EPA's 2020 TSCA Risk Evaluation policy choice regarding endpoint selection that have raised concerns pertaining to political interference and scientific integrity, among other issues. EPA received significant feedback on this aspect of the 2020 Risk Evaluation for TCE, including focused attention on this issue from the SACC and public commenters reacting to the draft Risk Evaluation for TCE (Ref. 90). Moreover, based on the discussion included in the peer review report of the 2020 Risk Evaluation, EPA also concluded that reasonable scientists would not disallow the use of the fetal cardiac defects studies, and that therefore other EPA program reliance on the fetal cardiac defects endpoint is scientifically valid (*e.g.,* Integrated Risk Information System (*https://iris.epa.gov*)).

The 2020 Risk Evaluation for TCE identified the developmental toxicity endpoint of fetal cardiac defects, which presents a lower POD than the immunotoxicity endpoints. The magnitude of the unreasonable risk from exposures to TCE would have been greater had the Agency relied upon the developmental toxicity endpoint (Ref. 1). Specifically, EPA identified the risk of fetal cardiac defects most strongly associated with offspring of older mothers, and therefore included risk estimates for fetal cardiac defects that account for susceptible mothers and their offspring in addition to PESS groups with other susceptibilities (*e.g.,* diabetes, infection status, drug exposure, stress, and metabolic sensitivity due to increased enzymatic activity of cytochrome P450 2E1 (CYP2E1) (Ref. 1).

EPA recognizes that among the non-cancer adverse health effects of TCE, the drivers for EPA's whole chemical unreasonable risk determination for TCE under TSCA were identified as immunotoxicity, namely acute immunosuppression and chronic

autoimmunity from inhalation and dermal exposures (Ref. 2).

Regarding the magnitude of human exposure, one factor EPA considers for the conditions of use that contribute to the unreasonable risk is the size of the exposed population, which, for TCE, EPA estimates is 53,210 workers, 14,659 ONUs, and 20,600 consumers (Ref. 3).

In addition to these estimates of numbers of workers, ONUs, consumers, and bystanders to consumer use directly exposed to TCE, EPA recognizes there is exposure to the general population from air and water pathways for TCE. (While bystanders are individuals in proximity to a consumer use of TCE, fenceline communities are a subset of the general population who may be living in proximity to a facility where TCE is being used in an occupational setting). EPA separately conducted a screening analysis to assess whether there may be risks to the general population from these exposure pathways. This analysis is summarized in full in the 2023 TCE proposed rule, which includes information on the SACC peer review of the methodology. This Unit addresses those areas where some risk was indicated with regard to expected exposures to fenceline communities that are associated with conditions of use for which EPA is finalizing longer compliance timeframes (including under a TSCA section 6(g) time-limited exemption).

EPA's analysis was presented to the SACC peer review panel in March 2022, and EPA is including SACC recommendations, as appropriate, in assessing general population exposures in upcoming risk evaluations. Overall, EPA's fenceline analysis for the air and water pathways for TCE did not allow EPA to rule out unreasonable risk to fenceline communities with confidence. Additionally, based on the fenceline analysis for the ambient air and water pathways for TCE, including the strengths, limitations, and uncertainties associated with the information used to inform the analysis, EPA is unable to determine with this analysis whether those risks drive the unreasonable risk of injury to health presented by TCE. Although EPA did not make a determination of unreasonable risk based on the fenceline screening analysis, this final regulatory action is expected to eliminate the potential risks identified in the screening analysis to any general population or fenceline communities close to facilities engaging in TCE manufacturing, processing, or use.

EPA's fenceline analysis for the water pathway for TCE, based on methods presented to the SACC, found potential risks from several occupational exposure scenarios from exposure to drinking water or incidental dermal or incidental oral exposure to ambient waters. The estimated exposure values for the screening level assessed water pathway resulted in estimated acute noncancer, chronic noncancer, or cancer risk relative to their respective benchmark values for various evaluated occupational exposure scenarios (Ref. 91). As described in more detail in Unit VII.A.2. of the 2023 TCE proposed rule, EPA identified potential risks that exceed the benchmark for non-cancer endpoints for several facilities, representing benchmark exceedances for between 1 and 10 occupational exposure scenarios, depending on whether the drinking water, incidental oral, or incidental dermal exposures are considered. In each case for the screening level analysis, risks were identified only for the maximum risk scenarios (or facilities with the highest reported results), and for a relatively small number of facilities. In instances where a facility may be engaging in a condition of use with a longer phaseout, EPA notes that in no instances did EPA identify drinking water intakes within 10 miles of a discharging facility and emphasizes that the scenarios analyzed include significant uncertainties and assumptions within the high-end risk estimates due to reliance on the highest-reported results from several facilities (Ref. 91). Regarding cancer risks, while the analysis identified facilities with some indication of releases and potential drinking water exposure with associated increased cancer risk that exceeds more than 1 in 1,000,000, the analysis did not identify any facilities with a risk exceeding 1 in 10,000; the highest potential risk estimate is in the 1 in 100,000 range (Ref. 91).

Under the regulatory actions finalized in this rule and described in Unit IV., all conditions of use will ultimately be prohibited and so any potential risk indicated by this screening analysis will be eliminated. The potential risks to fenceline communities from exposure through water further strengthen the impetus for EPA's prohibition of TCE. EPA therefore does not intend to revisit the water pathway for TCE as part of a supplemental risk evaluation.

EPA's fenceline analysis for the air pathway for TCE, using the methodology presented to SACC, and the multi-year analysis conducted in response to SACC feedback indicated potential exposure and associated risks to select populations within the general population at particular facilities (Ref. 92). As described in the 2023 TCE proposed rule, EPA conducted an ambient air analysis to assess non-cancer and cancer risk for real and generic, or modeled, facilities. The three components of the ambient air fenceline analysis were: (1) A single-year ambient air analysis; (2) A multi-year ambient air analysis; and (3) A land use analysis. After doing an initial screen (the single year ambient air screening analysis) that did not rule out unreasonable risk, EPA conducted additional analyses (the multi-year ambient air analysis). The single year ambient air screening analysis and the multi-year ambient air analysis allow EPA to mathematically calculate a cancer risk in fenceline communities. The Agency then conducted a land use analysis as part of both the single-year and multi-year analyses to determine if EPA could reasonably expect an exposure to fenceline communities to occur within the modeled distances for facilities where there was an indication of risk. This review consisted of a visual analysis using aerial imagery and interpreting land/use zoning practices around each facility to identify where residential, industrial/commercial businesses, or other public spaces are present within those radial distances indicating risk (as opposed to uninhabited areas), as well as whether the radial distances lie outside the boundaries of the facility.

There are some uncertainties associated with the fenceline analysis for the air pathway for TCE. The TRI dataset used for the single- and the multi-year fenceline analysis and land use analysis does not include actual release point locations, which can affect the estimated concentrations at varying distances modeled. To identify the release location for each facility, EPA used a local-coordinate system based on latitude/longitude coordinates reported in TRI. The latitude/longitude coordinates may represent the mailing address location of the office building associated with a very large facility or some other area of the facility rather than the actual release location (*e.g.,* a specific process stack). This discrepancy between the coordinates reported in TRI and the actual release point could result in an exposure concentration that does not represent the actual distance where fenceline communities may be exposed. The fenceline analysis also evaluated the most ''conservative exposure scenario'' that consists of a facility that operates year-round (365 days per year, 24 hours per day, 7 days per week) in a South Coastal meteorologic region and a rural topography setting (Ref. 92). Therefore, the modeled exposures to people who live in fenceline

communities may be overestimated if there are fewer exposure days per year or hours per day.

Additionally, the ambient air fenceline analysis (as well as the water pathway analysis, described in Unit VII.A.2.) organizes facilities and associated risks by Occupational Exposure Scenario (OES) and generally crosswalks each OES with the associated condition of use of TCE (Ref. 92). For some OES, EPA identified the associated conditions of use to the category level in the November 2020 Risk Evaluation for TCE, but, for the air pathway, was unable to identify the conditions of use to the subcategory level due to limited information on activities and use of TCE reported under TRI. Therefore, some OES indicating increased risk from ambient air exposures to TCE in the air fenceline analysis may be associated with one or more conditions of use of TCE. See Unit VII.A.1. of the 2023 TCE proposed rule for additional information on this analysis.

EPA's analysis included inhalation hazard values for cancer and non-cancer risk (acute and chronic immunological and developmental endpoints). Because risk estimates did not exceed the benchmarks for any risks of non-cancer effects, the results presented focus on cancer risks. Standard cancer benchmarks used by EPA and other regulatory agencies are an increased cancer risk above benchmarks ranging from 1 in 1,000,000 (one in a million) to 1 in 10,000 (*i.e.,* 1×10^{-6} to 1×10^{-4}). For example, when setting standards under CAA section 112(f)(2), EPA uses a two-step process, with ''an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual risk (MIR) of approximately 1-in-10 thousand'' (Ref. 93). In this fenceline analysis for the ambient air pathway for TCE, estimates of risk to fenceline communities were calculated using 1×10^{-6} as the benchmark for cancer risk in fenceline communities. While EPA is unable to determine, based on the screening level fenceline analysis, whether risks to the general population drive the unreasonable risk, as a matter of risk management policy EPA typically considers the range of 1×10^{-6} to 1×10^{-4} as the appropriate benchmark for increased cancer risk for the general population, including fenceline communities. The benchmark value is not a bright line, and the Agency considers a number of factors when determining unreasonable risk, such as the endpoint under consideration, the reversibility of effect, and exposure-related considerations (*e.g.,* duration, magnitude, or frequency of exposure, or population exposed).

The multi-year analysis evaluated 217 facilities and found risk estimates above one in a million for cancer for 133 of those facilities at a distance of 100 meters from the releasing facility. Based on the multi-year analysis, 58 of these 133 facilities either had cancer risks above one in a million at distances farther than 100 meters when compared to the single year analysis or are facilities that were not captured in the single-year analysis. The analysis did not identify any facilities with risk exceeding 1 in 10,000 at a distance greater than 100 meters; the highest risk estimate is in the 1 in 100,000 range (Ref. 92).The land use analysis of the 58 facilities indicating risk in the multi-year fenceline analysis (*i.e.,* facilities where cancer risk estimates were above one in a million at distances farther out when compared to the single-year analysis or facilities that were not captured in the single year analysis) identified a total of 55 facilities with expected exposure to fenceline communities. Those facilities represent 10 occupational exposure scenarios and include: degreasing (open-top batch vapor degreasing; closed-loop batch vapor degreasing; conveyorized vapor degreasing; web vapor degreasing; cold cleaning); formulation of aerosol and non-aerosol products; industrial processing aid; manufacturing; metalworking fluids; other industrial uses; process solvent recycling and worker handling of wastes; processing as a reactant; recycling and disposal; and repackaging (Ref. 92).

Under this regulatory action, each of the conditions of use that indicate risk relative to the one in a million cancer risk benchmark will ultimately be prohibited, many of them within one year. As a result, exposures to any fenceline communities from these facilities will be eliminated under the prohibitions in this rulemaking. The risks to fenceline communities from TCE exposure further strengthens the impetus for EPA's prohibition of TCE. As described earlier in this Unit, EPA notes that TSCA section 6(c)(2) provides for the consideration of health effects in promulgating a rule under TSCA section 6(a).

EPA recognizes that there are some facilities for which the screening analysis estimates that cancer risks are indicated that may exceed one in a million and with expected exposure to fenceline communities. These facilities may be associated with the following conditions of use that EPA is prohibiting under longer compliance timeframes: degreasing (open-top batch vapor degreasing; closed-loop batch vapor degreasing); industrial processing aid; manufacturing; and processing as a reactant. For processing as a reactant, EPA notes that while the analysis identified facilities with some indication of releases and potential exposure with associated increased cancer risk that exceeds one in a million at a distance of 100 meters from the releasing facility, the analysis did not identify any facilities exceeding the 1 in 10,000 benchmark; the highest risk estimate is in the 1 in 100,000 range. For this and other conditions of use that may be associated with facilities that indicate risks with expected exposure to fenceline communities, the rule requires strict workplace exposure controls via implementation of a WCPP as described in Unit IV.C., until the prohibition compliance date.

In the instances where efforts to reduce exposures in the workplace to levels below the interim ECEL could lead to adoption of engineering controls that ventilate more TCE outside, EPA expects that in some situations potential exposure may be limited through facility compliance with existing National Emissions Standards for Hazardous Air Pollutants (NESHAP) that cover TCE or through state-issued air permits that limit TCE emissions. Potentially applicable NESHAP include: 40 CFR part 63, subpart F, Synthetic Organic Chemical Manufacturing Industry; 40 CFR part 63, subpart DD, Off-Site Waste and Recovery Operations; 40 CFR part 63, subpart VVV, Publicly Owned Treatment Works; 40 CFR part 63, subpart VVVVVV, Chemical Manufacturing Area Sources; 40 CFR part 63, subpart GG, Aerospace Manufacturing and Rework Facilities; and 40 CFR part 63, subpart T, Halogenated Solvent Cleaning. NESHAP impose emission standards and/or work practice requirements reflecting maximum achievable control technology or impose emission standards and/or work practice requirements reflecting generally available control technology. The CAA requires residual risk reviews for standards reflecting maximum achievable control technologies, and technology reviews are required every 8 years for all NESHAP.

In the 2023 TCE proposed rule, EPA requested comment on any anticipated increases or decreases in future releases of TCE, as well as any modifications to requirements in the exposure control plan to account for air monitoring or fenceline impacts. As described in more detail in Section 8.1 of the Response to

Comments document (Ref. 11), several commenters provided input on EPA's fenceline analysis, with some stating their position that the fenceline analysis is not suitable for purposes of risk determination and should not be used to inform risk management (Refs. 35, 81, 78, 94), while other commenters stated that EPA's fenceline analysis insufficiently considered increased susceptibility to harm from TCE exposures in populations more likely to experience adverse health effects (Ref. 95). Regarding the management of any risks to fenceline communities from ambient air or water exposures, several commenters emphasized the need to protect fenceline communities at risk from TCE exposure related to conditions of use with longer phase-out periods (Ref. 45) and described their efforts, as a local government agency, to protect community members at risk of releases of TCE from neighboring businesses (Ref. 47). Several commenters stated they would support a requirement for additional monitoring or attesting in a WCPP that controls would not increase TCE emissions and impact fenceline communities (Refs. 31, 45, 44, 96). Industry commenters disagreed, stating that attestations or monitoring would be burdensome or redundant with requirements under NESHAP that regulate TCE (Refs. 39, 38, 78). Instead, these commenters recommended that any necessary release information should instead be documented through the results of the sampling done when processes change.

As discussed in more detail in the Response to Comments document (Ref. 11), EPA agrees that the screening level fenceline analyses for the water pathway and ambient air pathway for TCE do not allow EPA to conclude whether those risks of injury to fenceline communities contribute to the unreasonable risk because those fenceline screening methodologies were not developed for that purpose. EPA is eventually prohibiting all of the conditions of use that are associated with facilities that indicate potential exposure to fenceline communities, which would eventually address such exposure. Additionally, EPA determined facility resources should be focused on transitioning as quickly as possible to alternatives for TCE. Requiring owners and operators to attest to whether and why the exposure controls they have selected would not result in increased air releases of TCE from the workplace could divert resources from transitioning to alternatives. Therefore, in the WCPP requirements in this final rule, EPA is not requiring owners and operators to attest to whether and why the exposure controls they have selected would not result in increased air releases of TCE from the workplace and keep records of that statement as part of the WCPP exposure control plan. EPA emphasizes that the ultimate prohibition of manufacture, processing, distribution in commerce, use, and disposal of TCE is expected to address the risks identified in the screening analysis to any general population or fenceline communities close to facilities engaging in TCE use. EPA therefore does not intend to revisit the air pathway for TCE as part of a supplemental risk evaluation.

B. Environmental Effects and the Magnitude of Environmental Exposure

EPA's analysis of the environmental effects of TCE and the magnitude of exposure of the environment to TCE are in the 2020 Risk Evaluation for TCE (Ref. 1). The unreasonable risk determination for TCE is based solely on risks to human health (Ref. 2); based on the TSCA 2020 Risk Evaluation for TCE, EPA determined that exposures to the environment did not drive the unreasonable risk. A summary is presented here.

For all conditions of use, amphibian, fish, and aquatic invertebrate acute and chronic exposures to TCE do not drive the unreasonable risk. To characterize the exposure to TCE by aquatic organisms, EPA assessed environmental exposures derived from predicted and measured concentrations of TCE in surface water in the United States. Specifically, the aquatic exposures associated with the industrial and commercial conditions of use were predicted through modeling, and the aquatic exposure assessment also includes an analysis of collected measured surface water concentrations from monitoring data. EPA considered the biological relevance of the species to determine the concentrations of concern for the location of surface water concentration data to produce risk quotients, as well as frequency and duration of the exposure. EPA determined that the evaluation does not support an unreasonable risk determination based on risk to aquatic organisms.

The toxicity of TCE to sediment-dwelling invertebrates is similar to the toxicity to aquatic invertebrates. TCE is expected to remain in aqueous phases and not adsorb to sediment due to its water solubility and low partitioning to organic matter. TCE has relatively low partitioning to organic matter and biodegrades slowly, so TCE concentrations in sediment pore water are expected to be similar to the concentrations in the overlying water or lower in the deeper part of sediment where anaerobic condition prevails. Thus, the TCE detected in sediments is likely from the pore water. Therefore, for sediment-dwelling organisms, the risk estimates, based on the highest ambient surface water concentration, do not support an unreasonable risk determination based on risk to sediment-dwelling organisms from acute or chronic exposures.

For terrestrial organisms, TCE exposure is expected to be low since physical-chemical properties do not support an exposure pathway through water and soil pathways to these organisms. Therefore, for terrestrial organisms, the risk estimates for acute or chronic exposures, based on the EPA 2003 Guidance for Ecological Soil Screening Levels, do not support an unreasonable risk determination.

C. Benefits for Various Uses

As described in the 2023 TCE proposed rule, TCE has a wide range of uses, including as an intermediate during the manufacture of refrigerants, specifically HFC–134a, and is also used as a solvent, frequently in cleaning and degreasing (including spot cleaning, vapor degreasing, cold cleaning, and aerosol degreasing). A variety of consumer and commercial products use TCE as adhesives and sealants, in paints and coatings, and in other miscellaneous products. TCE is subject to Federal and State regulations and reporting requirements.

The largest uses of TCE, by production volume, are for processing as a reactant/intermediate as well as aerosol and vapor degreasing uses. Based on the 2020 Risk Evaluation for TCE, over 84% of the production volume of TCE is processed as a reactant/intermediate. The majority of the volume is for TCE processed as an intermediate in the production of HFC–134a, a refrigerant widely used in a broad range of applications. The second largest use of TCE is in industrial and commercial uses for aerosol and vapor degreasing. TCE is a relatively inexpensive solvent useful for cleaning contaminated metal parts and other fabricated materials (Ref. 1).

TCE has many other uses, which, based on the 2020 Risk Evaluation for TCE, collectively constitute about 1% of the production volume (Ref. 1). In battery separator manufacturing, TCE is used as an extraction solvent to produce the desired porosity in lead-acid and lithium battery separators, which are essential to power vehicles and systems in the U.S. supply chain.

D. Reasonably Ascertainable Economic Consequences of the Final Rule

1. Likely Effect of the Rule on the National Economy, Small Business, Technological Innovation, the Environment, and Public Health

The reasonably ascertainable economic consequences of this rule include several components, all of which are described in the Economic Analysis for this rule (Ref. 3). With respect to the anticipated effects of this rule on the national economy, EPA considered the number of businesses and workers that would be affected and the costs and benefits to those businesses and workers and did not find that there would be an impact on the national economy (Ref. 3). The economic impact of a regulation on the national economy becomes measurable only if the economic impact of the regulation reaches 0.25% to 0.5% of Gross Domestic Product (GDP) (Ref. 3). Given the current (real) GDP [of $60.4 trillion (2022)], this is equivalent to a cost of $151 billion to $302 billion. Therefore, because EPA has estimated that the monetized costs of the rule at $64.1 million annualized over 20 years at a 2% discount rate, $ 71.2 million annualized over 20 years at a 3% discount rate, and $102.4 million annualized over 20 years at a 7% discount rate, EPA has concluded that this action is highly unlikely to have any measurable effect on the national economy (Ref. 3). EPA does not have data to quantify employment impacts of the final rule. Instead, workers currently using TCE are expected to continue employment while shifting away from TCE use and towards alternatives. However, EPA acknowledges that transitional employment impacts may be experienced by some workers at facilities that opt to close or shift operations abroad instead of complying with requirements at the facilities currently using TCE. EPA considered the employment impacts of this final rule and found that the direction of change in employment is uncertain, but EPA expects the short-term and longer-term employment effects to be small.

Of the small businesses potentially impacted by this rule, 98.5% are expected to have impacts of less than 1% to their firm revenues, 0% are expected to have impacts between 1 and 3% to their firm revenues, and 1.5% are expected to have impacts greater than 3% to their firm revenues. The largest segment of businesses that will be affected by this regulation are commercial users of liquid and aerosol degreasers. Costs of alternatives were found to be both higher and lower than products containing TCE. For most product types, alternatives with similar efficacy are available with costs that both lower and higher than TCE products. However, there may be some applications where TCE is more effective, reducing labor time and wait time, and/or where extensive safety testing might be required. EPA was unable to quantify these costs.

With respect to this rule's effect on technological innovation, EPA expects this action to spur more innovation than it will hinder. A prohibition or significant restriction on the manufacture, processing, and distribution in commerce of TCE for uses covered in this final rule may increase demand for safer chemical substitutes. This rule is not likely to have significant effects on the environment because TCE does not present an unreasonable risk to the environment, though this rule does present the potential for small reductions in air emissions and soil contamination associated with improper disposal of products containing TCE. The effects of this rule on public health are estimated to be positive, due to the reduced risk of cancer and other non-cancer endpoints from exposure to TCE.

2. Costs and Benefits of the Regulatory Action and of the One or More Primary Alternative Regulatory Actions Considered by the Administrator

The costs and benefits that can be monetized for this rule are described at length in in the Economic Analysis (Ref. 3). The monetized costs for this rule are estimated to range from $64.1 million annualized over 20 years at a 2% discount rate, $71.2 million annualized over 20 years at a 3% discount rate, and $102.4 million annualized over 20 years at a 7% discount rate. The monetized benefits are estimated to range from $22.9 to $23.2 million annualized over 20 years at a 2% discount rate, $18.2 to $18.3 million annualized over 20 years at a 3% discount rate and $8.7 to $8.9 million annualized over 20 years at a 7% discount rate.

EPA considered the estimated costs to regulated entities as well as the cost to administer and enforce an alternative regulatory action. Estimated costs for regulatory alternative can be found in the Economic Analysis for this final rule (Ref. 3).

This final rule is expected to achieve health benefits for the American public, some of which can be monetized and others that, while tangible and significant, cannot be monetized. EPA determined that the balance of costs and benefits of this rule cannot be fairly described without considering the additional, non-monetized benefits of mitigating the non-cancer adverse effects. These effects may include neurotoxicity, kidney toxicity, liver toxicity, immunological and hematological effects, reproductive effects, and developmental effects. The multitude of adverse effects from TCE exposure can profoundly impact an individual's quality of life, as discussed in the proposed rule in Unit II.A. (overview), in this rule in Unit II.C.3. (description of the unreasonable risk), Unit V.A. (discussion of the health effects), and the 2020 Risk Evaluation for TCE. Chronic adverse effects of TCE exposure include both cancer and the non-cancer effects listed in this paragraph. Acute effects of TCE exposure could be experienced for a shorter portion of life but are nevertheless significant in nature. The incremental improvements in health outcomes achieved by given reductions in exposure cannot be quantified for non-cancer health effects associated with TCE exposure, and therefore cannot be converted into monetized benefits. The qualitative discussion throughout this rulemaking and in the Economic Analysis highlights the importance of the non-cancer effects. The value of reducing these effects includes willingness-to-pay to avoid illness, which includes cost of illness and other personal costs such as pain and suffering. Considering only monetized benefits underestimates the impacts of TCE adverse outcomes and therefore underestimates the benefits of this rule.

3. Cost Effectiveness of the Regulatory Action and of One or More Primary Alternative Regulatory Actions Considered by the Administrator

Cost effectiveness is a method of comparing certain actions in terms of the expense per item of interest or goal. A goal of this regulatory action is to prevent unreasonable risk resulting from exposure to TCE. The final rule would cost $15.4 million per potential prevented cancer case while the alternative regulatory action would cost $18.6 million using annualized costs for the 2 percent discount rate and cancer cases avoided from one year of reduced exposure under the policy options (the average across the 20-year analytical timeframe). Thus, the final rule has a lower cost per cancer case avoided compared to the alternative option, making it the most cost-effective of the two options considered. The primary differences between the final and alternative option are that the alternative includes fewer TSCA section 6(g) exemptions delaying prohibitions

on some uses which fall under interim WCPP in the final rule and a lower interim ECEL (0.0011 ppm). EPA received multiple public comments providing information on the impacts of a lower ECEL level and the need for longer duration and additional limited exemptions.

VI. TSCA Section 9 Analysis and Section 14 and 26 Considerations

A. TSCA Section 9(a) Analysis

TSCA section 9(a) provides that, if the Administrator determines, in the Administrator's discretion, that an unreasonable risk may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA, the Administrator must submit a report to the agency administering that other law that describes the risk and the activities that present such risk. TSCA section 9(a) describes additional procedures and requirements to be followed by EPA and the other Federal agency after submission of the report. As discussed in this Unit, the Administrator does not determine that unreasonable risk from TCE under the conditions of use may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA. EPA's section 9(a) analysis can be found in full in Unit VIII.A. of the 2023 TCE proposed rule, and responses to comments on that 9(a) analysis can be found in the Response to Comments document, section 9.1 (Ref. 11).

TSCA section 9(d) instructs the Administrator to consult and coordinate TSCA activities with other Federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burden of duplicative requirements. For this rulemaking, EPA has coordinated with appropriate Federal executive departments and agencies including but not limited to OSHA and the Consumer Product Safety Commission (CPSC), to, among other things, identify their respective authorities, jurisdictions, and existing laws with regard to the risk evaluation and risk management of TCE.

As discussed in more detail in the 2023 TCE proposed rule, OSHA requires that employers provide safe and healthful working conditions by setting and enforcing standards and by providing training, outreach, education, and assistance. OSHA, in 1971, established a PEL for TCE of 100 ppm of air as an 8-hour TWA with an acceptable ceiling concentration of 200 ppm and an acceptable maximum peak above the acceptable ceiling concentration for an eight-hour shift of 300 ppm, with a maximum duration of 5 minutes in any 2 hours. However, the exposure limits established by OSHA are higher than the exposure limit that EPA determined will be sufficient to address the unreasonable risk identified under TSCA from occupational inhalation exposures associated with certain conditions of use. Gaps exist between OSHA's authority to set workplace standards under the OSH Act and EPA's obligations under TSCA section 6 to eliminate unreasonable risk presented by chemical substances under the conditions of use. The U.S. CPSC, under authority provided to it by Congress in the CPSA, protects the public from unreasonable risk of injury or death associated with consumer products. Under the CPSA, CPSC has the authority to regulate TCE in consumer products, but not in other sectors such as automobiles, some industrial and commercial products, or aircraft for example.

EPA therefore concludes that TSCA is the only regulatory authority able to prevent or reduce unreasonable risk of TCE to a sufficient extent across the range of conditions of use, exposures, and populations of concern. An action under TSCA is also able to address occupational unreasonable risk and would reach entities that are not subject to OSHA. Moreover, the timeframe and any exposure reduction as a result of updating OSHA or CPSC regulations for TCE cannot be estimated, while TSCA imposes a much more accelerated two-year statutory timeframe for proposing and finalizing requirements to address unreasonable risk. Regulating TCE's unreasonable risk utilizing TSCA authority will also avoid the situation where a patchwork of regulations among several Agencies using multiple laws and differing legal standards would occur and is therefore a more efficient and effective means of addressing the unreasonable risk of TCE. Finally, as discussed in greater detail in the 2023 TCE proposed rule, the 2016 amendments to TSCA altered both the manner of identifying unreasonable risk and EPA's authority to address unreasonable risk, such that risk management is increasingly distinct from provisions of the CPSA, FHSA, or OSH Act. For these reasons, in the Administrator's discretion, the Administrator has analyzed this issue and does not determine that unreasonable risk from TCE may be prevented or reduced to a sufficient extent by an action taken under a Federal law not administered by EPA.

B. TSCA Section 9(b) Analysis

If EPA determines that actions under other Federal laws administered in whole or in part by EPA could eliminate or sufficiently reduce a risk to health or the environment, TSCA section 9(b) instructs EPA to use these other authorities to protect against that risk ''unless the Administrator determines, in the Administrator's discretion, that it is in the public interest to protect against such risk'' under TSCA. In making such a public interest finding, TSCA section 9(b)(2) states: ''the Administrator shall consider, based on information reasonably available to the Administrator, all relevant aspects of the risk . . . and a comparison of the estimated costs and efficiencies of the action to be taken under this title and an action to be taken under such other law to protect against such risk.''

Although several EPA statutes have been used to limit TCE exposure (Ref. 10), regulations under those EPA statutes largely regulate releases to the environment, rather than occupational or consumer exposures. While these limits on releases to the environment are protective in the context of their respective statutory authorities, regulation under TSCA is also appropriate for occupational and consumer exposures and in some cases can provide upstream protections that would prevent the need for release restrictions required by other EPA statutes (*e.g.,* RCRA, CAA, CWA). Updating regulations under other EPA statutes would not be sufficient to address the unreasonable risk of injury to the health of workers, occupational non-users, consumers, and bystanders who are exposed to TCE under its conditions of use. EPA's section 9(b) analysis can be found in full in Unit VIII.B. of the 2023 TCE proposed rule, and EPA's responses to comments on that section 9(b) analysis can be found in the Response to Comments document, section 9.2 (Ref. 11).

For these reasons, the Administrator does not determine that unreasonable risk from TCE under its conditions of use, as evaluated in the 2020 Risk Evaluation for TCE (Ref. 1), could be eliminated or reduced to a sufficient extent by actions taken under other Federal laws administered in whole or in part by EPA.

C. TSCA Section 14 Requirements

EPA is also providing notice to manufacturers, processors, and other interested parties about potential impacts to CBI. Under TSCA sections 14(a) and (b)(4), if EPA promulgates a rule pursuant to TSCA section 6(a) that

establishes a ban or phaseout of a chemical substance, the protection from disclosure of any CBI regarding that chemical substance and submitted pursuant to TSCA will be ''presumed to no longer apply,'' subject to the limitations identified in TSCA section 14(b)(4)(B)(i) through (iii). Pursuant to TSCA section 14(b)(4)(B)(iii), the presumption against protection from disclosure will apply only to information about the specific conditions of use that this rule prohibits or phases out. Per TSCA section 14(b)(4)(B)(i), the presumption against protection will not apply to information about certain emergency uses that this rule exempts from a ban or phaseout pursuant to TSCA section 6(g). Manufacturers or processors seeking to protect such information may submit a request for nondisclosure as provided by TSCA sections 14(b)(4)(C) and 14(g)(1)(E). Any request for nondisclosure must be submitted within 30 days after receipt of notice from EPA under TSCA section 14(g)(2)(A) stating EPA will not protect the information from disclosure. EPA anticipates providing such notice via the Central Data Exchange.

D. TSCA Section 26 Considerations

As explained in the 2023 TCE proposed rule, EPA fulfilled TSCA section 26(h) by using scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science. Comments received on the proposed rule about whether EPA adequately assessed reasonably available information under TSCA section 26 on the risk evaluation, and responses to those comments, can be found in the Response to Comments document, sections 2.1 and 3.1 (Ref. 11).

VII. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Risk Evaluation for Trichloroethylene. EPA Publication No. 740–R18008. November 2020.
2. EPA. Unreasonable Risk Determination, Trichloroethylene. December 2022.
3. EPA. Economic Analysis of the Final Regulation of Trichloroethylene Under TSCA Section 6(a).
4. EPA. Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act; Final Rule. October 5, 2021.
5. President Biden. The President and First Lady's Cancer Moonshot: Ending Cancer As We Know It. Accessed February 26, 2024. *https://www.whitehouse.gov/cancermoonshot/.*
6. A. Tinker et al. Inpatient Hospitalization Costs Associated with Birth Defects Among Persons of All Ages—United States, 2013. MMWR. Morbidity and mortality weekly report vol. 66,2 41–46. January 20, 2017.
7. M. Chen et al. Children with Heart Conditions and Their Special Health Care Needs—United States, 2016. MMWR. Morbidity and mortality weekly report vol. 67,38 1045–1049. 28. Sept. 28, 2018.
8. N. McClung et al. Financial burdens and mental health needs in families of children with congenital heart disease. Congenital heart disease 13.4 (2018): 554–562. April 6, 2018.
9. EPA. ChemView: Trichloroethylene (TCE), 79–01–6. Last updated on June 2, 2023. *https://chemview.epa.gov/chemview/?tf=0&ch=79-01-6&su=256737574985&as=31098&ac=115166378999&ma=4-11-1981377-4_16848473-4_16848474-4_49007566&gs=&tds=0&tdl=10&tas1=1&tas2=asc&tas3=undefined&tss=&modal=detail&modalId=100616&modalSrc=2-5-10-1-6378999-4-11-1981377.*
10. EPA. Appendix: Regulatory Actions Pertaining to Trichloroethylene. July 2023.
11. EPA. Trichloroethyelene (TCE); Regulation Under the Toxic Substances Control Act (TSCA); Final Rule; Response to Public Comments. December 2024.
12. EPA. Guidelines for Carcinogen Risk Assessment. March 2005.
13. EPA. Notes from Federalism Consultation on Forthcoming Proposed Rulemakings for Trichloroethylene, Perchloroethylene, and n-Methylpyrrolidone under TSCA Section 6(a). July 22, 2021.
14. EPA. Notes from Tribal Consultations on Forthcoming Proposed Rulemakings for Trichloroethylene (TCE) and Perchloroethylene (PCE). June 15 and July 8, 2021.
15. W. Heiger-Bernays and G. Nielsen. Environmental Justice Consultation Comment 1 for TCE and PCE. July 5, 2021.
16. S. Rayasam. Environmental Justice Consultation Comment 2 for TCE and PCE. June 16, 2021.
17. S. Liu. Environmental Justice Consultation Comment 3 for TCE and PCE. August 20, 2021.
18. EPA. Notes from Environmental Justice Consultations on Forthcoming Proposed Rulemakings for Trichloroethylene (TCE) and Perchloroethylene (PCE). July 2021.
19. Small Business Advocacy Review Panel. Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule; Toxic Substances Control Act (TSCA) Section 6(a) for Trichloroethylene (TCE). April 4, 2023.
20. EPA. Initial Regulatory Flexibility Analysis for Trichloroethylene; Regulation of Trichloroethylene under TSCA section 6(a) Proposed Rule; RIN 2070–AK83. June 2023.
21. EPA. Final Regulatory Flexibility Analysis for Trichloroethylene; Regulation under the Toxic Substances Control Act (TSCA); Final Rule; RIN 2070–AK83. December 2024.
22. EPA. Public Webinar on Trichloroethylene (TCE): Risk Evaluation and Risk Management under TSCA Section 6. December 15, 2020.
23. EPA. Stakeholder Meeting List for Proposed Rulemaking for Trichloroethylene under TSCA Section 6(a). May 19, 2023.
24. EPA. 2021 Policy on Children's Health. October 5, 2021.
25. EPA. Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA); Proposed Rule. **Federal Register**. 88 FR 74712. October 31, 2023 (FRL–8317–01–OCSPP).
26. EPA. Public Webinar on Trichloroethylene (TCE); Proposed Rulemaking under TSCA Section 6(a). November 14, 2023.
27. EPA. Stakeholder Meeting List for Proposed and Final Rulemaking for Trichloroethylene under TSCA Section 6(a).
28. EPA. Second Existing Chemical Exposure Limit (ECEL) (Developmental Toxicity) for Occupational Use of Trichloroethylene. March 31, 2022.
29. NABTU AFL–CIO, and USW Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0286. December 15, 2023.
30. Earthjustice et al. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0321. December 15, 2023.
31. Environmental Protection Network. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0266. December 12, 2023.
32. The Boeing Company. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0292. December 15, 2023.
33. Savannah River Nuclear Solutions LLC. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0261. December 12, 2023.

34. Microporous LLC. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0300. December 15, 2023.
35. Stoel Rives LLP on behalf of ENTEK. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0323. December 15, 2023.
36. Viant Collegeville LLC. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0303. December 15, 2023.
37. Keller and Heckman LLP on behalf of multiple pesticide registrants. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0308. December 15, 2023.
38. AIHA. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0244. December 5, 2023.
39. American Chemistry Council. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0320. December 15, 2023.
40. Keller and Heckman LLP on behalf of PPG. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0315. December 15, 2023.
41. SAFECHEM Europe GmbH. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0272. December 13, 2024.
42. Vinyl Institute. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0318. December 15, 2023.
43. American Chemistry Council's TCE Panel. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0310. December 15, 2023.
44. Environmental Defense Fund. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0312. December 15, 2023.
45. New York State Office of the Attorney General et al. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0311. December 15, 2023.
46. ENTEK. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0230. November 3, 2023.
47. New York Suffolk County Department of Health Services. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0275. December 14, 2023.
48. OSHA. Hazardous Waste Operations and Emergency Response (HAZWOPER). *https://www.osha.gov/emergency-preparedness/hazardous-waste-operations/standards.*
49. OSHA. Permissible Exposure Limits—Annotated Tables. *https://www.osha.gov/annotated-pels.*
50. Skiet. Comments on the Proposed Rulemaking for Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0465–0226. June 30, 2023.
51. Household and Commercial Products Association. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0306. December 15, 2023.
52. EPA. Guidance To Protect POTW Workers From Toxic And Reactive Gases And Vapors. June 1992.
53. The Adhesive and Sealant Council Inc. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0277. December 14, 2023.
54. GS Yuasa Energy Solutions and Yuasa Battery Inc. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0260. December 12, 2023.
55. Illinois Department of Transportation. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0271. December 13, 2023.
56. Chemical Users Coalition. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0279. December 14, 2023.
57. The State Asphalt Pavement Associations Inc. and The National Asphalt Pavement Association. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0282. December 14, 2023.
58. ASTM International. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0291. December 15, 2023.
59. Ohio Environmental Protection Agency. Comments on the Proposed Rulemaking for Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0465–0261. July 3, 2023.
60. Skon. Comments on the Proposed Rulemaking for Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0465–0223. June 30, 2023.
61. Polypore. Comments on the Proposed Rulemaking for Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0465–0251. July 3, 2023.
62. W-Scope. Comments on the Proposed Rulemaking for Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0465–0275. July 4, 2023.
63. EPA. Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA); Response to Public Comments.
64. EPA. Assistant Administrator Meeting with ENTEK on a TSCA Section 6(g) Exemption Request in Risk Management for Trichloroethylene (TCE). February 15, 2022.
65. EPA. Meeting with Microporous on Risk Management under TSCA Section 6 for Trichloroethylene. February 20, 2024.
66. PPG. TSCA Section 6(g) Exemption Request for use of TCE in the production of TESLIN® substrate. June 29, 2022.
67. Integer. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0305. December 15, 2023.
68. State Industrial Products. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0238. November 22, 2023.
69. CRC Industries Inc. Comments on the Proposed Rulemaking for Perchloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0720–0267. August 15, 2023.
70. National Fire Protection Association (NFPA). NFPA 70E Standard for Electrical Safety in the Workplace. *https://www.nfpa.org/codes-and-standards/nfpa-70e-standard-development/70e.*
71. American Association of State Highway and Transportation Officials. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0270. December 13, 2024.
72. Illinois Asphalt Pavement Association. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–

OPPT–2020–0642–0269. December 13, 2023.
73. InstroTek Inc. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0278. December 14, 2023.
74. InfraTest USA Inc et al. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0294. December 15, 2023.
75. The Utah Asphalt Pavement Association. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0295. December 15, 2023.
76. Texas Department of Transportation. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0660. December 7, 2023.
77. Indiana Department of Transportation. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0661. December 8, 2023.
78. US Chamber of Commerce. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0290. December 15, 2023.
79. Alliance for Chemical Distribution. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0285. December 15, 2023.
80. American Fuel & Petrochemical Manufacturers. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0319. December 15, 2023.
81. Halogenated Solvents Industry Alliance Inc. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0296. December 15, 2023.
82. Synesqo. PVDF: Critical uses and Relationship to TSCA Section 6 High-Priority Chemicals; Briefing for OIRA. August 13, 2024.
83. NASA. Solid Rocket Motor Nozzles Mission Critical Requirement for Trichloroethylene. February 1, 2023.
84. OSHA. Multi-Employer Citation Policy. December 10, 1999. *https://www.osha.gov/enforcement/directives/cpl-02–00–124.*
85. OSHA. Chemical Hazards and Toxic Substances. *https://www.osha.gov/chemical-hazards.*
86. OSHA. OSHA Technical Manual (OTM) Section II: Chapter 1. Personal Sampling for Air Contaminants. Last updated on September 14, 2023. *https://www.osha.gov/otm/section-2-healthhazards/chapter-1.*
87. EPA. Passive Samplers for Investigations of Air Quality: Method Description, Implementation, and Comparison to Alternative Sampling Methods. December 2014.
88. NIOSH. Hierarchy of Controls. Last Reviewed January 17, 2023. *https://www.cdc.gov/niosh/topics/hierarchy/.*
89. OSHA. Personal Protective Equipment. 2023.
90. EPA. Trichloroethylene (TCE); Revision to Toxic Substances Control Act (TSCA) Risk Determination; Response to Public Comments. December 2022.
91. EPA. Trichloroethylene: Fenceline Technical Support—Water Pathway. March 24, 2023.
92. EPA. Trichloroethylene (TCE): Fenceline Technical Support—Ambient Air Pathway. March 3, 2022.
93. EPA. National Emission Standards for Benzene Final Rule. 54 FR 38044. September 14, 1989.
94. American Petroleum Institute. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0263. December 12, 2023.
95. San Francisco Program on Reproductive Health and the Environment University of California. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). Document ID No. EPA–HQ–OPPT–2020–0642–0314. December 15, 2023.
96. Anonymous. Comments on the Proposed Rulemaking for Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA). EPA–HQ–OPPT–2020–0642–0372. November 9, 2023.
97. EPA. Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA). 2024.
98. EPA. Second Existing Chemical Exposure Limit (ECEL) (Developmental Toxicity) for Occupational Use of Trichloroethylene; Appendix B. March 31, 2022.

VIII. 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 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to Executive Order 12866 review is available in the docket. EPA prepared an analysis of the potential costs and benefits associated with this action (Ref. 3), which is available in the docket and summarized in Unit I.E.

B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted to OMB for approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR No. 2775.02 and OMB Control No. 2070–0232 (Ref. 97). The ICR is in the docket and is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

There are two primary provisions of the rule that may increase burden under the PRA. The first is downstream notification, which is required to be carried out by updates to the relevant SDS and required for manufacturers, processors, and distributors in commerce of TCE, who would provide notice to companies downstream upon shipment of TCE about the prohibitions. The information submitted to downstream companies through the SDS would provide knowledge and awareness of the restrictions to these companies. The second primary provision of the rule that may increase burden under the PRA is WCPP-related information generation, recordkeeping, and notification requirements (including development of exposure control plans; exposure level monitoring and related recordkeeping; development of documentation for a PPE program and related recordkeeping; development of documentation for a respiratory protection program and related recordkeeping; development and notification to potentially exposed persons (employees and others in the workplace) about how they can access the exposure control plans, exposure monitoring records, PPE program implementation documentation, and respirator program documentation; and development of documentation demonstrating eligibility for an exemption from the prohibitions, and related recordkeeping).

Respondents/affected entities: Persons that manufacture (including import), process, distribute in commerce, use, or dispose of TCE or products containing TCE. See also Unit I.A.

Respondent's obligation to respond: Mandatory (TSCA section 6(a) and 40 CFR part 751).

Estimated number of respondents: 23,070.

Frequency of response: On occasion.

Total estimated burden: 38,625 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,953,367 (per year), includes $5,351,750 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the OMB control number will be included on the approved collection instruments and added to 40 CFR part 9 to display the valid OMB control number assigned to the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

Pursuant to sections 603 and 609(b) of the RFA, 5 U.S.C. 601 *et seq.,* EPA prepared an IRFA for the 2023 TCE proposed rule (Ref. 20) and convened a SBAR Panel to obtain advice and recommendations from SERs that potentially would be subject to the rule's requirements. Summaries of the IRFA and Panel recommendations are presented in the 2023 TCE proposed rule, and copies of the related documents are in the docket.

As required by section 604 of the RFA, EPA prepared a FRFA for this action (Ref. 21). The FRFA addresses the issues raised by public comments on the IRFA for the proposed rule. The complete FRFA is available in the docket and is summarized here.

1. Statement of Need and Rule Objectives

Under TSCA section 6(a) (15 U.S.C. 2605(a)), if EPA determines after a TSCA section 6(b) risk evaluation that a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a PESS identified as relevant to the risk evaluation, under the conditions of use, EPA must by rule apply one or more requirements listed in TSCA section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents such risk. TCE was the subject of a risk evaluation under TSCA section 6(b)(4)(A) that was issued in November 2020. In addition, in January 2023, EPA issued a revised unreasonable risk determination that TCE as a whole chemical substance presents an unreasonable risk of injury to health under the conditions of use. As a result, EPA is taking action to the extent necessary so that TCE no longer presents such risk.

EPA developed this final rule after considering EPA's unreasonable risk determination for TCE, information provided in public comments on the proposed rule, findings from and comments on the SBAR Panel, other required consultations, and additional public outreach. More information on the 2023 TCE proposed rule, SBAR Panel, and outreach efforts for this action, is available in the docket for this rulemaking.

To address the identified unreasonable risk, this rule (1) prohibits the manufacture (including import), processing, and distribution in commerce of TCE for all uses (including all consumer uses), with longer timeframes for manufacture and processing related to certain uses and time-limited TSCA 6(g) exemptions for certain conditions of use; (2) requires strict workplace controls, including a TCE WCPP, which would include requirements for an inhalation exposure limit and glove requirements to limit dermal exposure to TCE, for conditions of use with long term phase-outs or time-limited exemptions under TSCA section 6(g); (3) establishes recordkeeping and downstream notification requirements; and (4) provides certain time-limited exemptions from requirements for conditions of use of TCE that are critical and essential, for which no technically and economically feasible, safer alternative is available, or where compliance with the requirement would significantly disrupt the national economy, national security, or critical infrastructure.

2. Significant Issues Raised by the Public Comments in Response to the IRFA and EPA Response

A summary of significant issues raised by comments about the IRFA (Ref. 20) and EPA's response is in the Response to Comments document (Ref 11), section 10.2.

3. SBA Office of Advocacy Comments and EPA Response

SBA Office of Advocacy provided comments on the proposed rule (EPA–HQ–OPPT–2020–0624). A summary of these comments and EPA's response is in section 3 of the FRFA (Ref. 21).

4. Estimate of the Number of Small Entities to Which the Final Rule Applies

This final rule potentially affects small manufacturers (including importers), processors, distributors, retailers, users of TCE or of products containing TCE, and entities engaging in disposal. EPA estimates that the rule would affect approximately 21,599 overall firms, of which 98.5% small entities have estimated impacts of less than 1% of revenues. End users with economically and technologically feasible alternatives are estimated to only incur costs associated with rule familiarization. For a full description of the estimated number of small entities affected by this rule, see the FRFA (Ref. 21).

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

a. Compliance Requirements

EPA is prohibiting all conditions of use of TCE. As described in the final rule, EPA is prohibiting all manufacturing (including import), processing, and distribution in commerce of TCE for all uses (including all consumer uses), as described in Unit IV.B.2. with longer compliance timeframes for manufacture and processing related to certain uses and TSCA section 6(g) exemptions for certain conditions of use. EPA is also requiring strict workplace controls, including compliance with a TCE WCPP, which would include requirements for an interim ECEL, as well as dermal protection, to limit exposure to TCE, for conditions of use with long term phase-outs or time-limited exemptions under TSCA section 6(g), as described in Units IV.B., IV.E., and IV.G. After December 17, 2024, prohibitions on manufacturing, processing, and distribution in commerce of TCE for consumer use will occur in 90 days for manufacturers (*i.e.,* on March 17, 2025), 180 days for processors and distributors (*i.e.,* on June 16, 2025), and 270 days for industrial and commercial users and disposal (*i.e.,* on September 15, 2025), except as specified in paragraphs (b)(4) through (25) of section 751.305.

An interim WCPP encompasses inhalation exposure thresholds, includes monitoring and recordkeeping requirements to verify that those thresholds are not exceeded, and other components, such as dermal protection, while EPA determined that prohibition of all conditions of use is ultimately necessary to address the unreasonable risk.

b. Classes of Small Entities Subject to the Compliance Requirements

The small entities that would be potentially directly regulated by this rule are small businesses that manufacture (including import), process, distribute in commerce, use, or dispose of TCE, including retailers of TCE for end-consumer uses.

c. Professional Skills Needed To Comply

Entities subject to this rule that manufacture (including import), process, or distribute TCE in commerce will be required to cease such activity. The entity will be required to modify their SDS or develop another way to inform their customers of the prohibition on manufacture, processing, and distribution of TCE. They are also required to maintain ordinary business records, such as invoices and bills-of-lading, that demonstrate compliance with the prohibitions, restrictions, and other provisions of this regulation. These are all routine business tasks that do not require specialized skills or training.

Entities that use TCE in any industrial and commercial capacity will be required to cease, with some timeframes for prohibitions longer than others. Restriction or prohibition of these uses would likely require the implementation of an alternative chemical or the cessation of use of TCE in a process or equipment that may require persons with specialized skills, such as engineers or other technical experts. Instead of developing an alternative method themselves, commercial users of TCE may choose to contract with another entity to do so.

Entities that are permitted, on a time-limited basis until prohibition, to continue to manufacture, process, distribute, or use TCE are required to implement a WCPP for continued use of TCE. A transition to a WCPP may require persons with specialized skills such as an engineer or health and safety professional. Instead of implementing the WCPP, entities that use TCE may choose to contract with another entity to do so. Records have to be maintained for compliance with a WCPP, as applicable. While this recording activity itself may not require a special skill, the information to be measured and recorded may require persons with specialized skills such as an industrial hygienist.

6. Steps Taken To Minimize Economic Impact to Small Entities

a. SBAR Panel

As required by section 609(b) of the RFA, EPA conducted outreach to small entities and convened a SBAR Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. The Panel solicited input on all aspects of these proposed regulations. Six potentially impacted small entities served as small-entity representatives (SERs) to the Panel, representing a broad range of small entities from diverse geographic locations. The Panel Report was signed on April 4, 2023 (Ref. 19).

Consistent with the RFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to elements of the regulatory flexibility analysis. It is important to note that the Panel's findings and discussion were based on the information available at the time the final report was prepared. For the full list of Panel recommendations, see Section 8.A. of the FRFA (Ref. 21).

EPA detailed the SBAR Panel's request for comment on these specific topics in the IRFA and proposed rule and solicited comment from the public. During the comment period, the public provided comment on some of these areas. Those comments and others received on the proposed rule and EPA's responses are in the Response to Comments document (Ref. 11).

b. Alternatives Considered

EPA analyzed alternative regulatory approaches to identify which would be feasible, reduce burden to small businesses, and achieve the objective of the statute (*i.e.,* applying one or more requirements listed in TSCA section 6(a) to the extent necessary so that the chemical substance or mixture no longer presents an unreasonable risk). As described in more detail in Unit VI. of the proposed rule, and Unit II.D. of the final rule, EPA considered several factors, in addition to identified unreasonable risk, when selecting among possible TSCA section 6(a) requirements. To the extent practicable, EPA factored into its decisions: the effects of TCE on health and the environment, the magnitude of exposure to TCE of human beings and the environment, the benefits of TCE for various uses, and the reasonably ascertainable economic consequences of the rule. As part of this analysis, EPA considered—in addition to the prohibitions described in Unit IV.—a wide variety of control measures to address the unreasonable risk from TCE such as a WCPP, weight fractions, a certification and limited access program, and prescriptive controls. EPA's analysis of these risk management approaches is detailed in Unit VI.A.3. of the proposed rule.

Based on consideration of public comments received on the proposed rule, EPA has made some changes from the proposed rule to the final rule. These changes include aspects of the WCPP, longer compliance timeframes for certain uses, and TSCA section 6(g) exemptions for certain conditions of use. EPA is also requiring strict workplace controls, including compliance with a TCE WCPP, which would include requirements for an interim ECEL, as well as dermal protection, to limit exposure to TCE, for conditions of use with long term phase-outs or time-limited exemptions. Additional changes to the rule based on consideration of public comments are detailed in Unit III. of the final rule and include identification of a regulatory threshold for TCE. For additional information and rationale towards alternative actions, see Unit III.D. of this final rule and Section 8.B. of the FRFA (Ref. 21).

In addition, EPA is preparing a Small Entity Compliance Guide to help small entities comply with this rule. EPA expects that this guide will be made available on the EPA website prior to the effective date of this final rule.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million (in 1995 dollars and adjusted annually for inflation) or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action will affect entities that use TCE. It is not expected to affect State, local, or Tribal governments because the use of TCE by government entities is minimal. The costs involved in this action are estimated not to exceed $183 million in 2023$ ($100 million in 1995$ adjusted for inflation using the GDP implicit price deflator) in any one year for State, local, and Tribal governments, in the aggregate, or for the private sector. Accordingly, this action is not subject to the requirements of sections 202, 203, or 205 of UMRA.

E. Executive Order 13132: Federalism

EPA has concluded that this action has federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because regulation under TSCA section 6(a) may preempt

state law. EPA provides the following federalism summary impact statement. The Agency consulted with state and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. This included a consultation meeting on July 22, 2021, and a background presentation on September 9, 2020. EPA invited the following national organizations representing State and local elected officials to these meetings: Association of State Drinking Water Administrators, National Association of Clean Water Agencies, Western States Water Council, National Water Resources Association, American Water Works Association, Association of Metropolitan Water Agencies, Association of Clean Water Administrators, Environmental Council of the States, National Association of Counties, National League of Cities, County Executives of America, U.S. Conference of Mayors, and National Association of Attorneys General. A summary of the meeting with these organizations, including the views that they expressed, is available in the docket (Ref. 13). EPA provided an opportunity for these organizations to provide follow-up comments in writing but did not receive any such comments.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. TCE is not manufactured, processed, or distributed in commerce by Tribes and, therefore, this rulemaking would not impose substantial direct compliance costs on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

Notwithstanding the lack of Tribal implications as specified by Executive Order 13175, EPA consulted with Tribal officials during the development of this action, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, which EPA applies more broadly than Executive Order 13175.

The Agency held a Tribal consultation from June 3, 2021, to August 20, 2021, with meetings on June 16 and July 6, 2021. Tribal officials were given the opportunity to meaningfully interact with EPA concerning the current status of risk management. During the consultation, EPA discussed risk management under TSCA section 6(a), findings from the 2020 Risk Evaluation for TCE, types of information to inform risk management, principles for transparency during risk management, and types of information EPA sought from Tribal officials. EPA briefed Tribal officials on the Agency's risk management considerations and Tribal officials raised no related issues or concerns to EPA during or in follow-up to those meetings (Ref. 14). EPA received no written comments as part of this consultation.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. While the environmental health or safety risks addressed by this action present a disproportionate risk to children due to TCE's developmental toxicity, this action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866. However, because there is evidence of an association between TCE and developmental toxicity, the prohibitions and restrictions on TCE in this final rule are expected to strengthen protection of children's health. In addition, EPA's *Policy on Children's Health* applies to this action. Information on how the policy was applied is available in Unit II.D.2.c.

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

This action is not a ''significant energy action'' under Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

Pursuant to the NTTAA section 12(d), 15 U.S.C. 272, the Agency has determined that this rulemaking involves environmental monitoring or measurement, specifically for occupational inhalation exposures to TCE. Consistent with the Agency's Performance Based Measurement System (PBMS), EPA will not require the use of specific, prescribed analytic methods. Rather, the Agency will allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

For this rulemaking, the key consideration for the PBMS approach is the ability to accurately detect and measure airborne concentrations of TCE at the interim ECEL and the interim ECEL action level. Some examples of methods which meet the criteria are included in appendix B of the ECEL memo (Ref. 98). EPA recognizes that there may be voluntary consensus standards that meet the criteria (Ref. 98).

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 the human health and environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with EJ concerns in accordance with Executive Order 14096 (88 FR 25251, April 26, 2023) (building on and supplementing Executive Order 12898 (59 FR 7629, February 16, 1994). As described more fully in the Economic Analysis for this rulemaking (Ref. 3), EPA conducted an analysis to characterize the baseline conditions faced by communities and workers affected by the regulation to identify the potential for disproportionate impacts on communities with environmental justice concerns using information about the facilities, workforce, and communities potentially affected by the regulatory options under current conditions, before the regulation would go into effect. The analysis drew on publicly available data provided by EPA and the U.S. Census Bureau, including data from the Toxics Release Inventory (TRI), Chemical Data Reporting (CDR), National Emissions Inventory (NEI), the American Community Survey (ACS), and the Quarterly Workforce Indicators

(QWI). The baseline characterization suggests that workers in affected industries and regions, as well as residents of nearby communities, are more likely to be people of color than the general population in affected states, although this varied by use assessed. Based on reasonably available information, EPA determined that there are potential environmental justice concerns in communities surrounding facilities subject to this regulation (Ref. 3).

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. While this regulatory action applies requirements to the extent necessary so that TCE no longer presents an unreasonable risk, EPA is not able to quantify the distribution of the change in risk for affected populations. EPA is also unable to quantify the changes in risks for affected populations from non-TCE-using technologies or practices that firms may adopt in response to the regulation to determine whether any such changes could pose environmental justice concerns. Data limitations that prevent EPA from conducting a more comprehensive analysis are summarized in the Economic Analysis (Ref. 3).

EPA additionally identified and addressed potential EJ concerns by conducting outreach to advocates of communities that might be subject to disproportionate exposure to TCE. On June 16, 2021, and July 6, 2021, EPA held public meetings as part of this consultation (Ref. 18). See also Unit II.D. These meetings were held pursuant to Executive Order 12898 and Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (86 FR 7619, February 1, 2021). EPA received three written comments following the EJ meetings, in addition to oral comments provided during the consultations (Refs. 15, 16, 17). In general, commenters supported strong regulation of TCE to protect lower-income communities and workers. Commenters supported strong outreach to affected communities, encouraged EPA to follow the hierarchy of controls, favored prohibitions, and noted the uncertainty, and, in some cases, inadequacy, of PPE.

The information supporting this Executive Order review is contained in Unit II.D., as well as in the Economic Analysis (Ref. 3). EPA's presentations, a summary of EPA's presentation and public comments made, and fact sheets for the EJ consultations related to this rulemaking are available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/materials-june-and-july-2021-environmental-justice*. These materials are also available in the docket for this rulemaking.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Michael S. Regan,

Administrator.

Therefore, for the reasons stated in the preamble, 40 CFR chapter I is amended to read as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

■ 2. Add subpart D to read as follows:

Subpart D—Trichloroethylene (TCE)

Sec.

751.301 General.
751.303 Definitions.
751.305 Prohibitions of manufacturing, processing, distribution in commerce, use and disposal.
751.307 Phase-out of processing trichloroethylene to manufacture of HFC–134a.
751.309 Phase-out of trichloroethylene use in vapor degreasing for booster rocket nozzles.
751.311 Phase-out of TCE use in the industrial and commercial use of TCE in laboratory use in asphalt testing and recovery.
751.313 Phase-out of disposal of TCE to industrial pre-treatment, treatment, or publicly owned treatment works.
751.315 Workplace chemical protection program.
751.317 Workplace requirements for energized electrical cleaner.
751.319 Workplace requirements for wastewater.
751.321 Downstream notification.
751.323 Recordkeeping requirements.
751.325 Exemptions.

Subpart D—Trichloroethylene (TCE)

§ 751.301 General.

(a) *Applicability.* This subpart sets certain restrictions on the manufacture (including import), processing, distribution in commerce, use, and disposal of trichloroethylene (TCE) (CASRN 79–01–6) to prevent unreasonable risk of injury to health in accordance with TSCA section 6(a).

(b) *Regulatory threshold.* Unless otherwise specified in this subpart, the prohibitions and restrictions of this subpart do not apply to products containing TCE at thresholds less than 0.1 percent by weight. This threshold does not apply to wastewater.

(c) *Byproducts within site-limited, physically enclosed systems.* Unless otherwise specified in this subpart, the prohibitions and restrictions of this subpart do not apply to TCE processed as a byproduct when that byproduct TCE is processed within a site-limited, physically enclosed system that is part of the same overall manufacturing process from which the byproduct TCE was generated. This exclusion does not permit TCE to be present in any product that results from such site-limited, physically enclosed systems, except as permitted by paragraph (b) of this section.

(d) *Owner and operator requirements.* Any requirement for an owner or operator or an owner and operator is a requirement for any individual that is either an owner or an operator.

§ 751.303 Definitions.

The definitions in subpart A of this part apply to this subpart unless otherwise specified in this section. In addition, the following definitions apply:

Distribute in commerce has the same meaning as in section 3 of the Act, except that the term does not include retailers for purposes of § 751.321 and § 751.323.

Interim ECEL means a concentration of airborne TCE of 0.2 parts per million (ppm) calculated as an eight (8)-hour time weighted average (TWA) that will be in place only for the timeframes indicated for specified conditions of use, after which prohibitions would take effect.

Interim ECEL action level means a concentration of airborne TCE of 0.1 parts per million (ppm) calculated as an eight (8)-hour time-weighted average (TWA).

Site-limited has the same meaning as in 40 CFR 711.3.

§ 751.305 Prohibitions of manufacturing, processing, distribution in commerce, use and disposal.

(a) Applicability. The provisions of this section apply to the following:

(1) Manufacturing (including importing and manufacturing for export);

(2) Processing (including processing for export);

(3) All industrial and commercial uses;

(4) All consumer uses;

(5) Distribution in commerce; and

(6) Disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works.

(b) Prohibitions. (1) After March 17, 2025, all persons are prohibited from manufacturing (including importing and manufacturing for export) TCE, except as specified for manufacturing in paragraphs (b)(5) through (25) of this section.

(2) After June 16, 2025, all persons are prohibited from processing (including processing for export) and distributing in commerce (including making available) TCE, including any TCE-containing products, except as specified for processing or distributing in commerce in paragraphs (b)(5) through (25) of this section, and all retailers are prohibited from distributing in commerce (including making available) TCE for any use.

(3) After September 15, 2025, all persons are prohibited from industrial and commercial use of TCE, including any TCE-containing products, except as specified for industrial or commercial use in paragraphs (b)(5) through (25) of this section.

(4) After September 15, 2025, all persons manufacturing (including importing), processing, and using TCE are prohibited from disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works except as specified in paragraphs (b)(14), (23) (24), and (26) of this section.

(5) After June 16, 2025, all persons are prohibited from manufacturing (including importing) TCE for industrial and commercial use for batch vapor degreasing in open-top and closed-loop degreasing equipment, except for the use specified in paragraphs (b)(11), (15), (16), (17), (20), and (21) of this section.

(6) After September 15, 2025, all persons are prohibited from processing TCE for industrial and commercial use for batch vapor degreasing in open-top and closed-loop degreasing equipment, except for the use specified in paragraphs (b)(11), (15), (16), (17), (20), and (21) of this section.

(7) After December 18, 2025, all persons are prohibited from the industrial and commercial use of TCE for batch vapor degreasing in open-top and closed-loop degreasing equipment, except for the use specified in paragraphs (b)(11), (15), (16), (17), (20), and (21) of this section.

(8) After June 10, 2026, all persons are prohibited from manufacturing (including importing) TCE for: (i) Processing of TCE as a reactant/intermediate, except for the use as specified in paragraph (b)(18) of this section; and (ii) Processing TCE for the industrial and commercial use of TCE as a processing aid for: process solvent used in battery manufacture; process solvent used in polymer fiber spinning, fluoroelastomer manufacture and Alcantara manufacture; extraction solvent used in caprolactam manufacture; precipitant used in beta-cyclodextrin manufacture, except for those uses specified in paragraphs (b)(14), (23) and (24) of this section.

(9) After December 18, 2026, all persons are prohibited from: (i) Processing TCE as a reactant/intermediate, except for the use as specified in paragraph (b)(18) of this section; and (ii) Processing for and industrial and commercial use of TCE as a processing aid in: process solvent used in battery manufacture; process solvent used in polymer fiber spinning, fluoroelastomer manufacture and Alcantara manufacture; extraction solvent used in caprolactam manufacture; precipitant used in beta-cyclodextrin manufacture, except for those uses specified in paragraphs (b)(14), (23) and (24) of this section.

(10) After December 18, 2027, all persons are prohibited from industrial and commercial use of TCE in energized electrical cleaners and from the manufacturing (including importing), processing, and distribution in commerce of TCE for such a use.

(11) After December 18, 2029, all persons are prohibited from the industrial and commercial use of TCE as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in producing rocket booster nozzles for Federal agencies and their contractors, and manufacturing (including importing), processing, and distribution in commerce of TCE for such use. If such persons obtain and maintain the records required by §§ 751.309 and 751.323 demonstrating that a final pre-launch test was completed using an alternative to TCE in the production of the rocket booster nozzles, the industrial and commercial use of TCE as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in producing rocket booster nozzles for Federal agencies and their contractors, and manufacturing (including importing), processing, and distribution in commerce of TCE for such use may continue beyond December 18, 2029.

(12) After December 18, 2029, all persons are prohibited from industrial and commercial use of TCE in adhesives and sealants for essential aerospace applications, and from the manufacturing (including importing), processing, and distribution in commerce of TCE for such uses.

(13) After December 18, 2029, all persons are prohibited from the industrial and commercial use of TCE as a laboratory chemical for asphalt testing and recovery using manual centrifuge processes, and manufacturing (including importing), processing, and distribution in commerce of TCE for such use, as further detailed in § 751.311.

(14) After December 18, 2029, all persons are prohibited from the industrial and commercial use of TCE as a processing aid for lithium battery separator manufacturing, and the manufacturing (including importing), processing, and distribution in commerce of TCE for such use as well as the disposal of TCE from such industrial or commercial use to industrial pre-treatment, industrial treatment, or publicly owned treatment works.

(15) After December 18, 2029, all persons are prohibited from the industrial and commercial use of TCE for batch vapor degreasing for land-based DoD defense systems by Federal agencies and their contractors, and from the manufacturing (including importing), processing, and distribution in commerce of TCE for such use.

(16) After December 18, 2031, all persons are prohibited from the industrial and commercial use of TCE as a solvent in closed-loop batch vapor degreasing necessary for rocket engine cleaning by Federal Agencies and their contractors as described in § 751.325(b)(1) and the manufacturing (including importing), processing, and distribution in commerce of TCE for such use.

(17) After December 18, 2031, all persons are prohibited from the industrial and commercial use of TCE as a solvent in closed-loop and open-top batch vapor degreasing for essential aerospace parts and components and narrow tubing for medical devices, and manufacturing (including importing), processing, and distribution in commerce of TCE for such use as described in § 751.325(b)(2).

(18) After June 18, 2033, all persons are prohibited from the industrial and commercial use of TCE as an intermediate for manufacturing hydrofluorocarbon 134-a, also known as 1,1,1,2-tetrafluroethane (HFC–134a: CASRN 811–97–2), and manufacturing (including importing), processing, and distribution in commerce for such use as described in § 751.307.

(19) After December 18, 2034, all persons are prohibited from the industrial and commercial use of TCE in laboratory use for asphalt testing and recovery, and manufacturing (including importing), processing, and distribution in commerce of TCE for such use, as described in § 751.311.

(20) After December 18, 2034, all persons are prohibited from the industrial and commercial use of TCE as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in producing rocket booster nozzles for Federal agencies and their contractors, and manufacturing (including importing), processing, and distribution in commerce of TCE for such use.

(21) After December 18, 2034, for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems, prohibit the industrial and commercial use of TCE as (and manufacturing (including importing), processing, and distribution in commerce of TCE for): potting compounds for naval electronic systems and equipment; sealing compounds for high and ultra-high vacuum systems; bonding compounds for materials testing and maintenance of underwater systems and bonding of nonmetallic materials; and cleaning agents to satisfy cleaning requirements (which includes degreasing using wipes, sprays, solvents and vapor degreasing) for: materials and components required for military ordnance testing; temporary resin repairs in vessel spaces where welding is not authorized; ensuring polyurethane adhesion for electronic systems and equipment repair and installation of elastomeric materials; various naval combat systems, radars, sensors, equipment; fabrication and prototyping processes to remove coolant and other residue from machine parts; machined part fabrications for naval systems; installation of topside rubber tile material aboard vessels; and vapor degreasing required for substrate surface preparation prior to electroplating processes.

(22) After December 18, 2034, all persons are prohibited from manufacturing (including import), processing, distribution in commerce, or use of TCE, including any TCE containing products, for industrial or commercial use in an emergency by NASA or its contractors as described in § 751.325(b)(4), and manufacturing (including importing), processing, and distribution in commerce of TCE for such use.

(23) After December 18, 2044, all persons are prohibited from the industrial and commercial use of TCE as a processing aid for lead-acid battery separator manufacturing, and the manufacturing (including importing), processing, and distribution in commerce of TCE for such use, as well as the disposal of TCE from such industrial or commercial use to industrial pre-treatment, industrial treatment, or publicly owned treatment works.

(24) After December 18, 2039, all persons are prohibited from the industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet materials manufacturing, and the manufacturing (including importing), processing, and distribution in commerce of TCE for such use, as well as the disposal of TCE from such industrial or commercial use to industrial pre-treatment, industrial treatment, or publicly owned treatment works.

(25) After December 18, 2074, all persons are prohibited from industrial and commercial uses of TCE for the laboratory uses described in § 751.325(b)(7), and from the manufacturing (including importing), processing, and distribution in commerce of TCE for such uses.

(26) After December 18, 2074, all persons are prohibited from disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works for the purposes of cleanup projects of TCE-contaminated water and groundwater as described in § 751.325(b)(8).

§ 751.307 Phase-out of processing trichloroethylene to manufacture of HFC–134a.

(a) Baseline. Before June 16, 2025, each manufacturer of HFC–134a who processes TCE as an intermediate must establish a baseline annual volume of TCE processed as an intermediate.

(1) The manufacturer must use the average annual volume of any 12 consecutive months in the 3 years preceding December 17, 2024 to calculate the baseline.

(2) The manufacturer must retain records that demonstrate how the baseline annual volume was calculated, in accordance with § 751.323(d)(1).

(b) Phase-out. (1) Beginning June 7, 2027, each manufacturer of HFC–134a who processes TCE as an intermediate is not permitted to process TCE as an intermediate at an annual volume greater than 75 percent of the baseline.

(2) Beginning June 18, 2029, each manufacturer of HFC–134a who processes TCE as an intermediate is not permitted to process TCE as an intermediate at an annual volume greater than 50 percent of the baseline.

(3) Beginning June 18, 2031, each manufacturer of HFC–134a who processes TCE as an intermediate is not permitted to process TCE as an intermediate at an annual volume greater than 25 percent of the baseline so established.

(4) Beginning June 18, 2033, each manufacturer of HFC–134a who processes TCE as an intermediate is prohibited from processing TCE as an intermediate.

(c) Workplace chemical protection program. The owner or operator of the location where TCE is processed as an intermediate in accordance with this section, and manufacturers (including importers) and processors of TCE for such use, must comply with § 751.315.

(d) *Recordkeeping.* The owner or operator of the location where TCE is processed as an intermediate in accordance with this section must comply with the recordkeeping requirements in § 751.323.

§ 751.309 Phase-out of trichloroethylene use in vapor degreasing for rocket booster nozzles.

(a) In accordance with § 751.305(b)(11), until December 18, 2029, TCE may be used as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in producing rocket booster nozzles for Federal agencies and their contractors, and manufactured (including imported), processed, and distributed in commerce for such use.

(b) From December 18, 2029, until December 18, 2034, TCE may only be used as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in producing rocket booster nozzles, and manufactured (including imported), processed, and distributed in commerce for such use, by Federal agencies and their contractors who maintain records demonstrating that a final pre-launch test of rocket booster nozzles without using TCE was completed.

(c) If a suitable alternative to TCE is identified and validated before the end of this phase-out period, Federal agencies and their contractors must transition to that alternative.

(d) The owner or operator of the location where TCE is used as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in producing rocket booster nozzles in accordance with this section, and manufacturers (including importers) and processors of TCE for such use, must comply with § 751.315.

(e) The owner or operator of the location where TCE is used as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in producing rocket booster nozzles in accordance with this section must comply with the recordkeeping requirements in § 751.323.

§ 751.311 Phase-out of TCE use in the industrial and commercial use of TCE in laboratory use for asphalt testing and recovery.

(a) In accordance with § 751.305(b)(18), until December 18, 2034, TCE may be manufactured (including imported), processed, distributed in commerce, and used in industrial and commercial use of TCE in laboratory use for asphalt testing and recovery.

(b) From December 18, 2029, until December 18, 2034, TCE is only permitted to be manufactured (including imported), processed, distributed in commerce, and used in industrial and commercial use of TCE in laboratory use for asphalt testing and recovery for methods that do not include manual centrifuge processes.

(c) The use of TCE as a laboratory chemical must be performed on the premises of a laboratory.

(d) The owner or operator of the location where such use of TCE as a laboratory chemical occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(e) The owner or operator of the location where such use of TCE as a laboratory chemical occurs must comply with the recordkeeping requirements in § 751.323.

§ 751.313 Phase-out of disposal of TCE to industrial pre-treatment, treatment, or publicly owned treatment works.

(a) After September 15, 2025, all persons manufacturing (including importing), processing, and using TCE are prohibited from disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works except as specified in the other subsections of this unit.

(b) After December 18, 2029, all industrial and commercial users of TCE for lithium battery separator manufacturing are prohibited from disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works.

(c) After December 18, 2039, all industrial and commercial users of TCE for specialty polymeric microporous sheet materials manufacturing are prohibited from disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works.

(d) After December 18, 2044, all industrial and commercial users of TCE for lead-acid battery separator manufacturing are prohibited from disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works.

(e) The owner or operator of the location where disposal of TCE to industrial pre-treatment, treatment, or to a publicly owned treatment works occurs must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(f) The owner or operator of the publicly owned treatment works where disposal of TCE occurs must comply with the wastewater workplace protections in § 751.319.

(g) The owner or operator of the location where such use of TCE occurs must comply with the recordkeeping requirements in § 751.323.

§ 751.315 Workplace chemical protection program.

(a) Applicability. The provisions of this section apply to the following conditions of use of TCE when permitted to continue beyond December 18, 2025, pursuant to accordance with §§ 751.305(b)(8) through (25), 751.307, 751.309, and 751.311:

(1) Manufacturing (domestic manufacture);

(2) Manufacturing (import);

(3) Processing as a reactant/intermediate;

(4) Processing into formulation, mixture, or reaction product;

(5) Processing (repackaging);

(6) Processing (recycling);

(7) Industrial and commercial use of TCE as a processing aid in: process solvent used in battery manufacture; process solvent used in polymer fiber spinning, fluoroelastomer manufacture and Alcantara manufacture; extraction solvent used in caprolactam manufacture; precipitant used in beta-cyclodextrin manufacture;

(8) Industrial and commercial use of TCE as an adhesive and sealant for essential aerospace applications;

(9) Industrial and commercial use of TCE in other miscellaneous industrial and commercial uses (laboratory use);

(10) Industrial and commercial use of TCE as a solvent in closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors;

(11) Industrial and commercial use of TCE in closed-loop or open-top batch vapor degreasing for essential aerospace parts and components and narrow tubing used for medical devices;

(12) Industrial and commercial use of TCE for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems; as potting compounds for naval electronic systems and equipment; sealing compounds for high and ultra-high vacuum systems; bonding compounds for materials testing and maintenance of underwater systems and bonding of nonmetallic materials; and cleaning agents to satisfy cleaning requirements (which includes degreasing using wipes, sprays, solvents and vapor degreasing) for: materials and components required for military ordnance testing; temporary resin repairs in vessel spaces where welding is not authorized; ensuring polyurethane adhesion for electronic systems and equipment repair and installation of elastomeric materials; various naval combat systems, radars, sensors, equipment; fabrication and prototyping processes to remove coolant and other residue from machine parts; machined part fabrications for naval systems; installation of topside rubber tile material aboard vessels; and vapor degreasing required for substrate surface preparation prior to electroplating processes;

(13) Industrial and commercial use of TCE as a solvent in closed-loop batch vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors;

(14) Industrial and commercial use of TCE in batch vapor degreasing for land-based DoD defense systems by Federal agencies and their contractors; and

(15) Disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works, except to the extent that the activity is covered by the workplace protections in § 751.319.

(b) Interim existing chemical exposure limit (interim ECEL)—(1) Applicability. The provisions of this paragraph (b) apply to any workplace engaged in the conditions of use listed in paragraphs (a)(1) through (15) of this section.

(2) *Interim ECEL.* Beginning September 20, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by September 15, 2025 for non-Federal owners and operators, or beginning 120 days after introduction of TCE into the workplace if TCE use commences after June 16, 2025, the owner or operator must ensure that no person is exposed to an airborne concentration of TCE in excess of the interim ECEL, consistent with the requirements of paragraph (c)

of this section and, if necessary, paragraph (e)(1) of this section.

(3) *Exposure monitoring*—(i) *General.* (A) Owners or operators must determine each potentially exposed person's exposure, without regard to respiratory protection, by either:

(*1*) Taking a personal breathing zone air sample of each potentially exposed person's exposure; or

(*2*) Taking personal breathing zone air samples that are representative of the 8-hour TWA of each exposure group.

(B) Personal breathing zone air samples are representative of the 8-hour TWA of all potentially exposed persons in an exposure group if the samples are of at least one person's work-shift exposure who represents the highest potential TCE exposures in that exposure group. Personal breathing zone air samples taken during one work shift may be used to represent potentially exposed person exposures on other work shifts where the owner or operator can document that the tasks performed and conditions in the workplace are similar across shifts.

(C) Exposure samples must be analyzed using an appropriate analytical method by a laboratory that complies with the Good Laboratory Practice Standards in 40 CFR part 792 or a laboratory accredited by the American Industrial Hygiene Association (AIHA) or another industry-recognized program.

(D) Owners or operators must ensure that methods used to perform exposure monitoring produce results that are accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of TCE.

(E) Owners and operators must re-monitor within 15 working days after receipt of any exposure monitoring when results indicate non-detect unless an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist reviews the monitoring results and determines re-monitoring is not necessary.

(ii) *Initial monitoring.* By June 21, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by June 16, 2025 for non-Federal owners and operators or within 30 days of introduction of TCE into the workplace, whichever is later, each owner or operator covered by this section must perform initial monitoring of potentially exposed persons. Where the owner or operator has monitoring results from monitoring conducted within five years prior to February 18, 2025 and the monitoring satisfies all other requirements of this section, the owner or operator may rely on such earlier monitoring results to satisfy the requirements of this paragraph.

(iii) *Periodic monitoring.* The owner or operator must establish an exposure monitoring program for periodic monitoring of exposure to TCE in accordance with Table 1.

TABLE 1 TO § 751.311(B)(3)(III)—PERIODIC MONITORING REQUIREMENTS

Air concentration condition	Periodic monitoring requirement
If initial exposure monitoring is below the interim ECEL action level (<0.1 ppm 8-hour TWA).	Periodic exposure monitoring is required at least once every five years.
If the most recent exposure monitoring indicates that airborne exposure is at or above the interim ECEL action level but at or below the interim ECEL (≥0.1 ppm 8-hour TWA, ≤0.2 ppm 8-hour TWA).	Periodic exposure monitoring is required within 180 days of the most recent exposure monitoring.
If the most recent exposure monitoring indicates that airborne exposure is above the interim ECEL (<0.2 ppm 8-hour TWA).	Periodic exposure monitoring is required within 90 days of the most recent exposure monitoring.
If the two most recent (non-initial) exposure monitoring measurements, taken at least seven days apart within a six-month period, indicate that airborne exposure is below the interim ECEL action level (<0.1 ppm 8-hour TWA).	Periodic exposure monitoring is required within five years of the most recent exposure monitoring.
If the owner or operator engages in a condition of use for which compliance with the WCPP is required but does not manufacture, process, use, or dispose of TCE in that condition of use over the entirety of time since the last required monitoring event.	The owner or operator may forgo the next periodic monitoring event. However, documentation of cessation of use of TCE is required; and periodic monitoring is required when the owner or operator resumes the condition of use.

(iv) *Additional monitoring.* (A) The owner or operator must conduct the exposure monitoring required by paragraph (b)(3)(ii) of this section within 30 days after there has been a change in the production, process, control equipment, personnel or work practices that may reasonably be expected to result in new or additional exposures above the interim ECEL action level or when the owner or operator has any reason to believe that new or additional exposures above the interim ECEL action level have occurred. Prior monitoring data cannot be used to meet this requirement.

(B) Whenever start-ups or shutdown, or spills, leaks, ruptures, or other breakdowns or unexpected releases occur that may lead to exposure to potentially exposed persons, the owner or operator must conduct the exposure monitoring required by paragraph (b)(3)(ii) of this section within 30 days after the conclusion of the start-up or shut down and/or the cleanup of the spill or repair of the leak, rupture, or other breakdown. Prior monitoring data cannot be used to meet this requirement.

(v) *Observation of monitoring.* (A) Owners and operators must provide potentially exposed persons or their designated representatives an opportunity to observe any monitoring of occupational exposure to TCE that is conducted under this section and designed to characterize their exposure.

(B) When monitoring observation requires entry into a regulated area, the owner or operator must provide the observers with the required PPE.

(C) Only persons who are authorized to have access to facilities classified in the interest of national security must be permitted to observe exposure monitoring conducted in such facilities.

(vi) *Notification of monitoring results.* (A) The owner or operator must inform each person whose exposures are monitored or who is part of a monitored exposure group, and their designated representative, of any monitoring results within 15 working days of receipt of those monitoring results.

(B) This notification must include the following:

(*1*) Exposure monitoring results;

(*2*) Identification and explanation of the interim ECEL and interim ECEL action level;

(*3*) Statement of whether the monitored airborne concentration of TCE exceeds the interim ECEL action level or interim ECEL;

(*4*) If the interim ECEL is exceeded, descriptions of any exposure controls implemented by the owner or operator

to reduce exposure to or below the interim ECEL;

(*5*) Explanation of any respiratory protection provided in accordance with paragraphs (b)(4) and I of this section;

(*6*) Quantity of TCE in use at the time of monitoring;

(*7*) Location(s) of TCE use at the time of monitoring;

(*8*) Manner of TCE use at the time of monitoring; and

(*9*) Identified releases of TCE.

(C) Notice must be written, in plain language, and either provided to each potentially exposed person individually in a language that the person understands, or posted in an appropriate and accessible location outside the regulated area with an English-language version and a non-English language version representing the language of the largest group of workers who do not read English.

(4) *Regulated areas*—(i) *Establishment.* By September 20, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by September 15, 2025 for non-Federal owners and operators, or within 90 days after receipt of any exposure monitoring that indicates exposures exceeding the interim ECEL, the owner or operator must establish and maintain a regulated area wherever airborne concentrations of TCE exceed or can reasonably be expected to exceed the interim ECEL.

(ii) *Access.* The owner or operator must limit access to regulated areas to authorized persons.

(iii) *Demarcation.* The owner or operator must demarcate regulated areas from the rest of the workplace in a manner that adequately establishes and alerts persons to the boundaries of the area and minimizes the number of authorized persons exposed to TCE within the regulated area.

(iv) *Provision of respirators.* (A) The owner or operator must ensure that each person who enters a regulated area is supplied with a respirator selected in accordance with paragraph I(e) of this section and must ensure that all persons within the regulated area are using the provided respirators whenever TCE exposures may exceed the interim ECEL, except as provided in paragraph (B) of this section.

(B) An owner or operator who has implemented all feasible controls as required in paragraph (c)(1)(i) of this section, and who has established a regulated area as required by paragraphs (b)(4)(i) of this section where TCE exposure can be reliably predicted to exceed the interim ECEL only on certain days (for example, because of work or process schedule) must have persons use respirators in that regulated area on those days.

(v) *Prohibited activities.* (A) The owner or operator must ensure that, within a regulated area, persons do not engage in non-work activities which may increase TCE exposure.

(B) The owner or operator must ensure that while persons are wearing respirators in the regulated area, they do not engage in activities which interfere with respirator performance.

(c) *Interim ECEL control procedures and plan—(1) Methods of compliance.* (i) By December 17, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by December 18, 2025, for non-Federal owners and operators, the owner or operator must institute one or a combination of elimination, substitution, engineering controls or administrative controls to reduce exposure to or below the interim ECEL except to the extent that the owner or operator can demonstrate that such controls are not feasible as an interim measure, in accordance with the hierarchy of controls.

(ii) If the feasible controls required under paragraph (c)(1)(i) of this section that can be instituted do not reduce exposures for potentially exposed persons to or below the interim ECEL, then the owner or operator must use such controls to reduce exposure to the lowest levels achievable by these controls and must supplement those controls by the use of respiratory protection that complies with the requirements of paragraph (e) of this section.

(iii) Where an owner or operator cannot demonstrate exposure to TCE has been reduced to or below the interim ECEL through the use of controls required under paragraphs (c)(1)(i) and (ii) of this section, and has not demonstrated that it has appropriately supplemented feasible exposure controls with respiratory protection that complies with the requirements of paragraph (e) of this section, this will constitute a failure to comply with the interim ECEL.

(2) *Exposure control plan.* By December 17, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by December 18, 2025, for non-Federal owners and operators, each owner and operator must establish and implement an exposure control plan.

(i) *Exposure control plan contents.* The exposure control plan must include documentation of the following:

(A) Identification of exposure controls that were considered, including those that were used or not used to meet the requirements of paragraph (c)(1)(i) of this section, in the following sequence: elimination, substitution, engineering controls and administrative controls;

(B) For each exposure control considered, a rationale for why the exposure control was selected or not selected based on feasibility, effectiveness, and other relevant considerations;

(C) A description of actions the owner or operator must take to implement exposure controls selected, including proper installation, regular inspections, maintenance, training, or other actions;

(D) A description of each regulated area, how they are demarcated, and persons authorized to enter the regulated areas;

(E) Description of activities conducted by the owner or operator to review and update the exposure control plan to ensure effectiveness of the exposure controls, identify any necessary updates to the exposure controls, and confirm that all persons are properly implementing the exposure controls;

(F) An explanation of the procedures for responding to any change that may reasonably be expected to introduce additional sources of exposure to TCE, or otherwise result in increased exposure to TCE, including procedures for implementing corrective actions to mitigate exposure to TCE.

(ii) *Exposure control plan requirements.* (A) The owner or operator must not implement a schedule of personnel rotation as a means of compliance with the interim ECEL.

(B) The owner or operator must maintain the effectiveness of any controls instituted under this paragraph (c).

(C) The exposure control plan must be reviewed and updated as necessary, but at least every 5 years, to reflect any significant changes in the status of the owner or operator's approach to compliance with paragraphs (b) and (c) of this section.

(iii) *Availability of exposure control plan.* (A) Owners or operators must make the exposure control plan and associated records, including interim ECEL exposure monitoring records, interim ECEL compliance records, and workplace participation records available to potentially exposed persons and their designated representative.

(B) Owners or operators must notify potentially exposed persons and their designated representatives of the availability of the exposure control plan and associated records within 30 days of the date that the exposure control plan is completed and at least annually thereafter.

(C) Notice of the availability of the exposure control plan and associated records must be provided in plain language writing to each potentially exposed person in a language that the person understands or posted in an appropriate and accessible location outside the regulated area with an English-language version and a non-English language version representing the language of the largest group of workers who do not read English.

(D) Upon request by the potentially exposed person or their designated representative(s), the owner or operator must provide the specified records at a reasonable time, place, and manner. If the owner or operator is unable to provide the requested records within 15 working days, the owner or operator must, within those 15 working days, inform the potentially exposed person or designated representative(s) requesting the record(s) of the reason for the delay and the earliest date when the record will be made available.

(d) *Workplace information and training.* (1) By September 20, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by September 15, 2025 for non-Federal owners and operators, the owner or operator must institute a training program and ensure that persons potentially exposed to TCE participate in the program according to the requirements of this paragraph (d).

(2) The owner or operator must ensure that each potentially exposed person is trained prior to or at the time of initial assignment to a job involving potential exposure to TCE.

(3) The owner or operator must ensure that information and training is presented in a manner that is understandable to each person required to be trained.

(4) The following information and training must be provided to all persons potentially exposed to TCE:

(i) The requirements of this section, as well as how to access or obtain a copy of these requirements in the workplace;

(ii) The quantity, location, manner of use, release, and storage of TCE and the specific operations in the workplace that could result in exposure to TCE, particularly noting where each regulated area is located;

(iii) Methods and observations that may be used to detect the presence or release of TCE in the workplace (such as monitoring conducted by the owner or operator, continuous monitoring devices, visual appearance, or odor of TCE when being released);

(iv) The acute and chronic health hazards of TCE as detailed on relevant Safety Data Sheets; and

(v) The principles of safe use and handling of TCE and measures potentially exposed persons can take to protect themselves from TCE, including specific procedures the owner or operator has implemented to protect potentially exposed persons from exposure to TCE, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

(5) The owner or operator must re-train each potentially exposed person annually to ensure that each such person maintains the requisite understanding of the principles of safe use and handling of TCE in the workplace.

(6) Whenever there are workplace changes, such as modifications of tasks or procedures or the institution of new tasks or procedures, that increase exposure, and where those exposures exceed or can reasonably be expected to exceed the interim ECEL action level, the owner or operator must update the training and ensure that each potentially exposed person is re-trained.

(e) *Personal protective equipment (PPE)—(1) Respiratory protection.* (i) By September 20, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by September 15, 2025 for non-Federal owners and operators, or within 90 days after receipt of any exposure monitoring that indicates exposures exceeding the interim ECEL, or, if an owner or operator is required to provide respiratory protection pursuant to paragraphs (b)(4)(iv) and (c)(1)(ii) of this section, the owner or operator must ensure that each potentially exposed person is provided with a respirator according to the requirements of this section.

(ii) For purposes of this paragraph (e)(1) of this section, cross-referenced provisions in 29 CFR 1910.134 applying to an ''employee'' apply equally to potentially exposed persons and cross-referenced provisions applying to an ''employer'' also apply equally to owners or operators. Other terms in cross-referenced provisions in 29 CFR 1910.134 that are defined in 29 CFR 1910.134(b) have the meaning assigned to them in that paragraph.

(iii) By September 20, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by September 15, 2025 for non-Federal owners and operators, or within 90 days after receipt of any exposure monitoring that indicates exposures exceeding the interim ECEL, if an owner or operator is required to provide respiratory protection pursuant to paragraph (b)(4)(iv) or (c)(1)(ii), the owner or operator must develop and administer a written respiratory protection program consistent with the requirements of 29 CFR 1910.134(c)(1), (c)(3) and (c)(4).

(iv) Owners and operators must select respiratory protection based on a medical evaluation consistent with the requirements of 29 CFR 1910.134(e). If a potentially exposed person cannot use a negative-pressure respirator that would otherwise be required, then the owner or operator must provide that person with an alternative respirator. The alternative respirator must have less breathing resistance than the negative-pressure respirator and provide equivalent or greater protection. If the person is unable to use an alternative respirator, then the person must not be permitted to enter the regulated area.

(v) Owners and operators must select respiratory protection that properly fits each affected person and communicate respirator selections to each affected person consistent with the requirements of 29 CFR 1910.134(f).

(vi) Owners and operators must provide, ensure use of, and maintain (in a sanitary, reliable, and undamaged condition) respiratory protection that is of safe design and construction for the applicable condition of use consistent with the requirements of 29 CFR 1910.134(g) through (j).

(vii) Prior to or at the time of initial assignment to a job involving potential exposure to TCE, owners and operators must provide training to all persons required to use respiratory protection consistent with 29 CFR 1910.134(k).

(viii) Owners and operators must retrain all persons required to use PPE at least annually, or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use PPE, or when changes in the workplace or in PPE to be used render the previous training obsolete.

(ix) Owners or operators must select and provide to persons appropriate respirators as indicated by the most recent monitoring results as follows:

(A) If the measured exposure concentration is at or below 0.2 ppm (200 ppb): no respiratory protection is required.

(B) If the measured exposure concentration is above 0.2 ppm (200 ppb) and less than or equal to 2 ppm (2,000 ppb) (10 times interim ECEL): Any National Institute for Occupational Safety and Health (NIOSH) Approved air-purifying half mask respirator equipped with organic vapor cartridges or canisters; or any NIOSH Approved Supplied-Air Respirator (SAR) or

Airline Respirator operated in demand mode equipped with a half mask; or any NIOSH Approved Self-Contained Breathing Apparatus (SCBA) in a demand mode equipped with a half mask [APF 10].

(C) If the measured exposure concentration is above 2 ppm and less than or equal to 5 ppm (25 times interim ECEL): Any NIOSH Approved Powered Air-Purifying Respirator (PAPR) equipped with a loose-fitting facepiece or hood/helmet equipped with organic vapor cartridges or canisters; or any NIOSH Approved SAR or Airline Respirator in a continuous-flow mode equipped with a loose-fitting facepiece or helmet/hood [APF 25].

(D) If the measured exposure concentration is above 5 ppm and less than or equal to 10 ppm (50 times interim ECEL): Any NIOSH Approved air-purifying full facepiece respirator equipped with organic vapor cartridges or canisters; any NIOSH Approved PAPR with a half mask equipped with organic vapor cartridges or canisters; any NIOSH Approved SAR or Airline Respirator in a continuous flow mode equipped with a half mask; any NIOSH Approved SAR or Airline Respirator operated in a pressure-demand or other positive-pressure mode with a half mask; or any NIOSH Approved SCBA in demand-mode equipped with a full facepiece or helmet/hood [APF 50].

(E) If the measured exposure concentration is above 10 ppm and less than or equal to 200 ppm (1,000 times interim ECEL): Any NIOSH Approved PAPR equipped with a full facepiece equipped with organic vapor cartridges or canisters; any NIOSH Approved SAR or Airline Respirator in a continuous-flow mode equipped with full facepiece; any NIOSH Approved SAR or Airline Respirator in pressure-demand or other positive-pressure mode equipped with a full facepiece and an auxiliary self-contained air supply; or any NIOSH Approved SAR or Airline Respirator in a continuous-flow mode equipped with a helmet or hood and that has been tested to demonstrated performance at a level of a protection of APF 1,000 or greater [APF 1000].

(F) If the measured exposure concentration is greater than 200 ppm (1,000+ times interim ECEL): Any NIOSH Approved SCBA equipped with a full facepiece or hood/helmet and operated in a pressure demand or other positive pressure mode; air supply [APF 10,000+].

(G) If the exposure concentration is unknown: Any NIOSH Approved combination SAR equipped with a full facepiece and operated in pressure demand or other positive pressure mode with an auxiliary self-contained air supply; or any NIOSH Approved SCBA operated in pressure demand or other positive pressure mode and equipped with a full facepiece or hood/helmet [APF 1000+].

(x) Owners and operators must select and provide respirators consistent with the requirements of 29 CFR 1910.134(d)(1)(iv), and with consideration of workplace and user factors that affect respirator performance and reliability.

(xi) Owners and operators who select air-purifying respirators must either:

(A) Select NIOSH Approved respirators that have an end-of-service-life indicator (ESLI) appropriate for TCE; or

(B) Implement a change schedule for canisters and cartridges based on objective information or data that ensures that canisters and cartridges are changed before the end of their service life. The written respiratory protection program required by paragraph (e)(1)(iii) of this section must include a description of the information and data relied upon, the basis for reliance on the information and data, and the basis for the canister and cartridge change schedule.

(xii) Owners and operators must, consistent with 29 CFR 1910.134(j), ensure that all respirator filters, cartridges, and canisters used in the workplace are labeled and color coded per NIOSH requirements and that the label is not removed and remains legible.

(xiii) Owners and operators must ensure that respirators are used in compliance with the terms of the respirator's NIOSH approval.

(xiv) Owners and operators must conduct regular evaluations of the workplace, including consultations with potentially exposed persons using respiratory protection, consistent with the requirements of 29 CFR 1910.134(l), to ensure that the provisions of the written respiratory protection program required under paragraph (e)(1)(iii) of this section are being effectively implemented.

(xv) The respiratory protection requirements in this paragraph represent the minimum respiratory protection requirements, such that any respirator affording a higher degree of protection than the required respirator may be used.

(2) *Dermal protection.* (i) By September 20, 2027 for Federal agencies and Federal contractors acting for or on behalf of the Federal government, or by September 15, 2025 for non-Federal owners and operators, owners and operators must supply and require the donning of gloves by potentially exposed persons that are chemically resistant to TCE where dermal exposure to TCE can be expected to occur, after application of the requirements in paragraph (c) of this section, in accordance with the hierarchy of controls.

(ii) Owners and operators must provide gloves that are of safe design and construction for the work to be performed and that properly fit each person who is required to use gloves.

(iii) Owners and operators must communicate glove selections to each affected person and ensure that each person who is required to wear gloves uses and maintains them in a sanitary, reliable, and undamaged condition.

(iv) Owners and operators must provide activity-specific dermal PPE training in accordance with 29 CFR 1910.132(f) to all persons required to use gloves prior to or at the time of initial assignment to a job involving potential dermal exposure to TCE. For the purposes of this paragraph (e)(4)(iv), provisions in 29 CFR 1910.132(f) applying to an ''employee'' also apply equally to potentially exposed persons, and provisions applying to an ''employer'' also apply equally to owners or operators.

(v) Owners and operators must retrain each person required to use gloves annually or whenever the owner or operator has reason to believe that a previously trained person does not have the required understanding and skill to properly use the gloves, or when changes in the workplace or in PPE to be used render the previous training obsolete.

§ 751.317 Workplace requirements for energized electrical cleaner.

(a) *Applicability.* The provisions of this section apply to the industrial and commercial use of TCE in energized electrical cleaner.

(b) *Energized electrical cleaner requirements—(1) Personal Protective Equipment (PPE).* (i) The provisions of this paragraph (b) apply after September 15, 2025.

(ii) Owners or operators must ensure that all potentially exposed persons using TCE, including any TCE-containing products, are provided with dermal PPE and training on proper use of PPE as outlined in § 751.315(e)(2).

(iii) Owners or operators must ensure that all persons using TCE, including any TCE containing products, are provided with respiratory PPE and training on proper use of PPE in accordance with § 751.315(e)(1), except that instead of selecting appropriate respirators based on monitoring results

pursuant to paragraph (e)(1)(ix), owners or operators must select from and provide the following types of respirators: any NIOSH Approved air-purifying full facepiece respirator equipped with organic vapor cartridges or canisters; any NIOSH Approved Powered Air-Purifying Respirator (PAPR) with a half mask equipped with organic vapor cartridges or canisters; any NIOSH Approved Supplied-Air Respirator (SAR) or Airline Respirator in a continuous flow mode equipped with a half mask; any NIOSH Approved Supplied-Air Respirator (SAR) or Airline Respirator operated in a pressure-demand or other positive-pressure mode with a half mask; any NIOSH Approved SCBA in demand-mode equipped with a full facepiece or helmet/hood [APF 50]; or any respirator affording a higher degree of protection.

(2) *Alternative to PPE Requirements.* (i) As an alternative to the requirements in paragraph (b)(1) of this section, the owner or operator may choose to follow the Workplace Chemical Protection Program (WCPP) provisions in § 751.315.

(ii) Owners or operators who choose to follow the WCPP as an alternative to the requirements in paragraph (b)(1) of this section must:

(A) Document and maintain a statement that they are electing to comply with the WCPP.

(B) Comply with the WCPP provisions in § 751.315 and document compliance in accordance with § 751.323(b).

§ 751.319 Workplace requirements for wastewater.

(a) Applicability. The provisions of this section apply to the following disposal sub-conditions of use for their respective phaseouts, in accordance with § 751.305 (b) (14), (23), (24), and (26):

(1) Cleanup of sites with TCE water contamination; and,

(2) Publicly owned treatment works.

(b) Cleanup sites. Beginning September 15, 2025 the owner or operator of the location where potentially exposed persons are involved in the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works for the purposes of facilitating cleanup projects of TCE-contaminated water and groundwater must ensure that potentially exposed persons involved with the activity of removing the TCE-contaminated water and groundwater from the location where it was located and treating the removed TCE-contaminated water and groundwater on site are protected to the interim ECEL level of 0.2 ppm and protected from dermal contact with TCE-containing wastewater in accordance with the following requirements. For the purposes of this paragraph (b) of this section, cross-referenced provisions in 29 CFR 1910.120 applying to an ''employee'' apply equally to potentially exposed persons and cross-referenced provisions applying to an ''employer'' also apply equally to owners or operators.

(1) *Written site-specific safety and health plan.* Owners and operators must have a site-specific safety and health plan that addresses the health hazards presented by TCE to potentially exposed persons involved in the disposal of TCE-containing wastewater and that contains elements consistent with 29 CFR 1910.120(b)(4)(ii)(A), (B), (C), (E) and (F).

(2) *Training.* Owners and operators must provide training consistent with § 751.315(d) to potentially exposed persons prior to or at the time of initial assignment to a cleanup site job that involves the disposal of TCE-containing wastewater.

(3) *Engineering controls, work practices and PPE.* Engineering controls, work practices, and, if necessary, PPE must be implemented and provided in compliance with 40 CFR 751.315(c)(1) and (e).

(4) *Exposure monitoring.* (i) By September 15, 2025 or upon initial entry to a cleanup site, whichever is later, owners and operators must perform representative air monitoring consistent with 29 CFR 1910.120(h)(2) to identify any exposures to airborne TCE above the interim ECEL.

(ii) Owners and operators must perform periodic air monitoring consistent with 29 CFR 1910.120(h)(3) when there is any indication that exposures may have exceeded the interim ECEL since prior monitoring.

(iii) Owners and operators must monitor the exposures of those persons likely to have the highest exposures to airborne TCE above the interim ECEL by using personal air sampling frequently enough to characterize their exposures consistent with 29 CFR 1910.120(h)(4).

(iv) Owners and operators must perform exposure monitoring at least once every five years.

(c) Publicly owned treatment works. By September 15, 2025 owners or operators of publicly owned treatment works, where there is a reasonable possibility of the presence of TCE, must comply with one of the following:

(1) *Water screening level.* (i) Screen industrial wastewater discharge received at publicly owned treatment works by sampling and analyzing for a water concentration of TCE.

(ii) If the TCE concentration in wastewater exceeds 0.00284 mg/L of TCE, owners or operators must comply with the Workplace Chemical Protection Program provisions in § 751.315, except for the initial monitoring requirements in paragraph § 751.315(b)(3)(ii).

(2) *Alternative to water screening level.* (i) As an alternative to the requirements in paragraph (1) of this section, the owner or operator may choose to follow the Workplace Chemical Protection Program (WCPP) provisions in § 751.315.

(ii) Owners or operators who choose to follow the WCPP as an alternative to the requirements in paragraph (1) of this section must comply with the WCPP provisions in § 751.315 and document compliance in accordance with § 751.323(b).

§ 751.321 Downstream notification.

(a) Beginning on February 18, 2025, each person who manufactures (including imports) TCE for any use must, prior to or concurrent with the shipment, notify companies to whom TCE is shipped, in writing, of the restrictions described in this subpart in accordance with paragraph (c) of this section.

(b) Beginning on June 16, 2025, each person who processes or distributes in commerce TCE or any TCE-containing products for any use must, prior to or concurrent with the shipment, notify companies to whom TCE is shipped, in writing, of the restrictions described in this subpart in accordance with paragraph (c) of this section.

(c) The notification required under paragraphs (a) and (b) of this section must occur by inserting the following text in section 1(c) and 15 of the Safety Data Sheet (SDS) provided with the TCE or with any TCE-containing product:

After June 16, 2025, this chemical/product is and can only be domestically manufactured, imported, processed, or distributed in commerce for the following purposes until the following prohibitions take effect: (1) Processing as an intermediate a) for the manufacture of HFC–134a until June 18, 2033, and b) for all other processing as a reactant/intermediate until December 18, 2026; (2) Industrial and commercial use as a solvent for open-top batch vapor degreasing until December 18, 2025; (3) Industrial and commercial use as a solvent for closed-loop batch vapor degreasing until December 18, 2025, except for industrial and commercial use in batch vapor degreasing for land-based DoD defense systems by Federal agencies and their contractors until December 18, 2029, and except for industrial and commercial use as a solvent for closed-loop batch vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors until December 18, 2031, and except for industrial and commercial use of

TCE in closed-loop and open-top batch vapor degreasing for essential aerospace parts and components and narrow tubing used in medical devices until December 18, 2031, and except for industrial and commercial use as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors until December 18, 2034; (4) Industrial and commercial use in processing aid (a) for lithium battery separator manufacturing until December 18, 2029, and (b) for lead-acid battery separator manufacturing until December 18, 2044, and (c) for specialty polymeric microporous sheet material manufacturing until December 18, 2039, and (d) in process solvent used in battery manufacture; in process solvent used in polymer fiber spinning, fluoroelastomer manufacture and Alcantara manufacture; in extraction solvent used in caprolactam manufacture; and in precipitant used in beta-cyclodextrin manufacture until December 18, 2026; (5) Industrial and commercial uses for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems until December 18, 2034; and (6) Industrial and commercial use for laboratory use (a) for essential laboratory activities until December 18, 2074 and (b) for asphalt testing and recovery using manual centrifuge processes until December 18, 2029 and for asphalt testing and recovery until December 18, 2034.

§ 751.323 Recordkeeping requirements.

(a) General records. After February 18, 2025, all persons who manufacture, process, distribute in commerce, or engage in industrial or commercial use of TCE or TCE-containing products must maintain ordinary business records, such as invoices and bills-of-lading related to compliance with the prohibitions, restrictions, and other provisions of this subpart.

(b) Workplace chemical protection program compliance. (1) Interim ECEL exposure monitoring. For each monitoring event, owners or operators subject to the interim ECEL described in § 751.315(b) must document the following:

(i) Dates, duration, and results of each sample taken;

(ii) The quantity, location(s), and manner of TCE in use at the time of each monitoring event;

(iii) All measurements that may be necessary to determine the conditions that may affect the monitoring results;

(iv) Name, workplace address, work shift, job classification, work area, and type of respiratory protection (if any) by each monitored person;

(v) Identification of all potentially exposed persons that a monitored person is intended to represent if using a representative sample, consistent with § 751.315(b)(3)(i)(A) and (B);

(vi) Sampling and analytical methods used as described in § 751.315(b)(3)(i)(D);

(vii) Compliance with the Good Laboratory Practice Standards in accordance with 40 CFR part 792, or use of a laboratory accredited by the AIHA or another industry-recognized program as required by § 751.315(b)(3)(i)(C);

(viii) Information regarding air monitoring equipment, including: type, maintenance, calibrations, performance tests, limits of detection, and any malfunctions;

(ix) Re-monitoring determinations conducted by an Environmental Professional as defined at 40 CFR 312.10 or a Certified Industrial Hygienist, if results indicated non-detect; and

(x) Notification of exposure monitoring results in accordance with § 751.315(b)(3)(vi).

(2) *Interim ECEL compliance.* Owners or operators subject to the interim ECEL described in § 751.315(b) must retain records of:

(i) Exposure control plan as described in § 751.315(c)(2).

(ii) Implementation of the exposure control plan described in § 751.315(c)(2), including:

(A) Any regular inspections, evaluations, and updating of the exposure controls to maintain effectiveness;

(B) Confirmation that all persons are implementing the exposure controls; and

(C) Each occurrence and duration of any start-up, shutdown, or malfunction of the facility that causes an exceedance of the interim ECEL and any subsequent corrective actions taken by the owner or operator during the start-up, shutdown, or malfunctions to mitigate exposures to TCE.

(iii) Respiratory protection used by each potentially exposed person and PPE program implementation as described in § 751.315(e), including:

(A) The name, workplace address, work shift, job classification, and work area of each potentially exposed person, and the type of respiratory protection provided to each potentially exposed person;

(B) The basis for the specific PPE selection in accordance with § 751.315(e); and

(C) Fit testing and training in accordance with § 751.315(e).

(iv) Information and training provided as required in § 751.315(d).

(3) *Workplace participation.* Owners or operators must document the notice to and ability of any potentially exposed person who may reasonably be affected by TCE inhalation exposure and their designated representative to readily access the exposure control plans, facility exposure monitoring records, PPE program implementation records, or any other information relevant to TCE exposure in the workplace.

(c) *Records related to exemptions.* To maintain eligibility for an exemption described in § 751.325, owners or operators must maintain records related to, and demonstrating compliance with, the specific conditions of the exemption.

(d) *Records related to phase-outs.* (1) Beginning February 18, 2025, each manufacturer of HFC–134a who uses TCE as an intermediate under § 751.307 must maintain records of the annual quantity of TCE purchased and processed until the termination of all processing of TCE as an intermediate and, beginning June 16, 2025, must maintain records that demonstrate how the baseline annual volume was calculated, in accordance with § 751.307(a)(1).

(2) Beginning September 15, 2025, each person using TCE under § 751.309 for industrial and commercial use as a solvent for closed-loop batch vapor degreasing for rayon fabric scouring for end use in rocket booster nozzle production by Federal agencies and their contractors must maintain records demonstrating that the end use is in rocket booster nozzle production for Federal agencies and their contractors.

(3) Beginning September 15, 2025, each person using TCE under § 751.311 for industrial and commercial use in laboratory use for asphalt testing and recovery must maintain records demonstrating compliance with the use of TCE as specified in § 751.311.

(4) After December 18, 2029, each person using TCE under § 751.311 for industrial and commercial use in laboratory use for asphalt testing and recovery must maintain records demonstrating compliance with the provision in § 751.311 that the use of TCE in laboratory use for asphalt testing and recovery be in methods that do not include manual centrifuge processes.

(5) After December 18, 2029, each person using TCE under § 751.309 for industrial and commercial use as a solvent for closed-loop batch vapor degreasing, specifically for rayon fabric scouring, must maintain records that demonstrate that a final pre-launch test of rocket booster nozzles without using TCE was completed.

(e) *Records related to workplace requirements for energized electrical cleaner.* (1) Owners and operators subject to the energized electrical cleaner requirements described in § 751.317 must retain records of:

(i) Statement regarding whether the owner or operator is complying with the prescriptive PPE requirements described in § 751.317(b)(1) or with the WCPP described in § 751.317(b)(2).

(ii) Dermal and respiratory protection used by each potentially exposed person and program implementation as described in § 751.317(b)(1) or WCPP records described in § 751.323(b).

(2) Distributors of TCE, including TCE containing products, for use in energized electrical cleaning must retain sale records, including:

(i) Name of purchaser;

(ii) Date of sale; and

(iii) Quantity of TCE or TCE containing products sold.

(f) *Records related to wastewater workplace protection requirements.* (1) Owners and operators subject to the wastewater workplace protection requirements for cleanup sites described in § 751.319 must retain records related to and demonstrating compliance with the provisions of § 751.319 and 29 CFR 1910.120 that are applicable to the particular site and records related to and demonstrating compliance with the interim ECEL.

(2) Publicly owned treatment works must retain records related to and demonstrating compliance with the wastewater screening and other requirements described in § 751.319, and if applicable must retain records for the WCPP as described in § 751.323(b).

(g) Minimum record retention periods. The records required under this section must be retained for at least 5 years from the date that such records were generated, except for the records required under paragraph (d)(1), which must be retained for at least 5 years after the use of TCE covered by the records has ceased.

§ 751.325 Exemptions.

(a) *In general.* (1) The time-limited exemptions described in this section are established in accordance with 15 U.S.C. 2605(g).

(2) In order to be eligible for the exemptions described in this section, regulated parties must comply with all conditions established for such exemptions in this section.

(b) *Exemptions—(1) Closed-loop batch vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors until December 18, 2031.* The following are specific conditions of the exemption for industrial and commercial use of TCE as a solvent for closed-loop vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors described in § 751.305(b)(15):

(i) The use of TCE in industrial and commercial as a solvent for closed-loop vapor degreasing is limited to the closed-loop batch vapor degreasing necessary for rocket engine cleaning by Federal agencies and their contractors.

(ii) The owner or operator of the location where such use occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(iii) The owner or operator of the location where such use of TCE occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the recordkeeping requirements in § 751.323.

(2) *Closed-loop and Open-top batch vapor degreasing for essential aerospace parts and components and narrow tubing for medical devices until December 18, 2031.* The following are specific conditions of the exemption for vapor degreasing described in § 751.305(b)(16):

(i) The use of TCE for closed-loop and open-top batch vapor degreasing is limited to the cleaning of:

(A) Essential aerospace parts and components where cleaning alternatives present technical feasibility or performance challenges to meet specifications from Federal agencies or other long-standing design specifications included in existing contracts; and

(B) Narrow tubing for medical devices.

(ii) The owner or operator of the location where such use of TCE occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(iii) The owner or operator of the location where such use of TCE occurs must comply with the recordkeeping requirements in § 751.323.

(3) *Certain industrial and commercial uses of TCE for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems until December 18, 2034.* The following are specific conditions of the exemption for industrial and commercial uses of TCE for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems described in § 751.305(b)(20):

(i) The industrial and commercial use of TCE must be limited for vessels of the Armed Forces and their systems, and in the maintenance, fabrication, and sustainment for and of such vessels and systems: as potting compounds for naval electronic systems and equipment; sealing compounds for high and ultra-high vacuum systems; bonding compounds for materials testing and maintenance of underwater systems and bonding of nonmetallic materials; and cleaning agents to satisfy cleaning requirements (which includes degreasing using wipes, sprays, solvents and vapor degreasing) for: materials and components required for military ordnance testing; temporary resin repairs in vessel spaces where welding is not authorized; ensuring polyurethane adhesion for electronic systems and equipment repair and installation of elastomeric materials; various naval combat systems, radars, sensors, equipment; fabrication and prototyping processes to remove coolant and other residue from machine parts; machined part fabrications for naval systems; installation of topside rubber tile material aboard vessels; and vapor degreasing required for substrate surface preparation prior to electroplating processes.

(ii) The owner or operator of the location where such use occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(iii) The owner or operator of the location where such use of TCE occurs must comply with the recordkeeping requirements in § 751.323.

(4) *Use of TCE or TCE-containing products in an emergency by the National Aeronautics and Space Administration and its contractors operating within the scope of their contracted work until December 18, 2034*—(i) *Applicability.* This exemption shall apply to the following specific conditions of use:

(A) Industrial and commercial use as solvent for open-top or closed-loop batch vapor degreasing.

(B) Industrial and commercial use as solvent for cold cleaning.

(C) Industrial and commercial use as a solvent for aerosol spray degreaser/cleaner and mold release.

(D) Industrial and commercial use as a lubricant and grease in tap and die fluid.

(E) Industrial and commercial use as a lubricant and grease in penetrating lubricant.

(F) Industrial and commercial use as an adhesive and sealant in solvent-based adhesives. and sealants.

(G) Industrial and commercial as a functional fluid in heat exchange fluid.

(H) Industrial and commercial use in corrosion inhibitors and anti-scaling agents.

(I) Industrial and commercial use of TCE as a processing aid.

(J) Manufacturing (including importing) and processing of TCE for the industrial and commercial uses listed in paragraphs (b)(4)(i)(A) through (I) of this section.

(ii) *Emergency use.* (A) *In general.* An emergency is a serious and sudden situation requiring immediate action, within 15 days or less, necessary to protect:

(*1*) Safety of NASA's or their contractors' personnel;

(*2*) NASA's missions;

(*3*) Human health, safety, or property, including that of adjacent communities; or

(*4*) The environment.

(B) *Duration.* Each emergency is a separate situation; if use of TCE exceeds 15 days, then justification must be documented.

(iii) *Eligibility.* To be eligible for the exemption, the NASA and its contractors must:

(A) Select TCE because there are no technically and economically feasible safer alternatives available during the emergency.

(B) Perform the emergency use of TCE at locations controlled by NASA or its contractors.

(C) Comply with the following conditions:

(1) Notification. Within 15 working days of the emergency use by NASA and its contractors, NASA must provide notice to the EPA Assistant Administrators of both the Office of Enforcement and Compliance Assurance and the Office of Chemical Safety and Pollution Prevention that includes the following:

(*i*) Identification of the conditions of use detailed in paragraph (b)(4)(i) of this section that the emergency use fell under;

(*ii*) An explanation for why the emergency use met the definition of emergency in paragraph (b)(4)(i)(B) of this section; and

(*iii*) An explanation of why TCE was selected, including why there were no technically and economically feasible safer alternatives available in the particular emergency.

(2) Exposure control. The owner or operator must comply with the Workplace Chemical Protection Program provisions in § 751.315, to the extent technically feasible in light of the particular emergency.

(3) Recordkeeping. The owner or operator of the location where the use takes place must comply with the recordkeeping requirements in § 751.323.

(5) *Lead-acid battery separator manufacturing until* December 18, 2044. The following are specific conditions of the exemption for use as a processing aid in the manufacturing of lead-acid battery separators described in § 751.305(b)(22):

(i) The use of TCE as a processing aid for battery separator manufacturing must be limited to lead acid battery separator manufacturing.

(ii) This specific industrial and commercial use of TCE as a processing aid can only be used at industrial facilities in which TCE is in use for the manufacture of lead acid battery separators prior to February 18, 2025.

(iii) The owner or operator of the location where such use occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(iv) The owner or operator of the location where such use of TCE occurs must comply with the recordkeeping requirements in § 751.323.

(6) *Industrial and commercial use of TCE as a processing aid for specialty polymeric microporous sheet materials manufacturing until* December 18, 2039. The following are specific conditions of the exemption for industrial and commercial use as a processing aid at § 751.305(b)(23):

(i) The use of TCE as a processing aid must be limited to specialty polymeric microporous sheet materials manufacturing.

(ii) This specific industrial and commercial use of TCE as a processing aid can only be used at industrial facilities in which TCE is in use for the manufacture of specialty polymeric microporous sheet materials prior to February 18, 2025.

(iii) The owner or operator of the location where such use occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(iv) The owner or operator of the location where such use of TCE occurs must comply with the recordkeeping requirements in § 751.323.

(7) *Laboratory use for essential laboratory activities until December 18, 2074.* The following are specific conditions of the exemption for laboratory use at § 751.305(b)(24):

(i) The industrial and commercial use of TCE as a laboratory chemical must only be for essential laboratory activities. Essential laboratory activities are:

(A) Laboratory activities associated with cleanup and exposure monitoring activities, including chemical analysis, chemical synthesis, extracting or purifying other chemicals, dissolving other substances, research and development for the advancement of cleanup activities, and as an analytical standard for monitoring related to TCE contamination or exposure monitoring.

(B) Laboratory activities conducted by Federal agencies and their contractors, other than those described in paragraph (b)(7)(i)(A) of this section, and similar laboratory activities, provided the use is essential to the agency's mission.

(ii) The use of TCE as a laboratory chemical for testing asphalt is regulated under § 751.311, and is not considered an essential laboratory activity.

(iii) The use of TCE as a laboratory chemical must be performed on the premises of a laboratory.

(iv) The owner or operator of the location where such use of TCE occurs, and manufacturers (including importers) and processors of TCE for such use, must comply with the Workplace Chemical Protection Program provisions in § 751.315.

(v) The owner or operator of the location where such use of TCE occurs must comply with the recordkeeping requirements in § 751.323.

(8) *Disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works for the purposes of cleanup projects of TCE-contaminated water and groundwater until December 18, 2074.* The following are specific conditions of the exemption for disposal at § 751.305(b)(25):

(i) The disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works must only be for the purposes of cleanup projects of TCE-contaminated water and groundwater, and is limited to sites undergoing cleanup under CERCLA, RCRA, or other Federal, state, and local government laws, regulations, or requirements.

(ii) The owner or operator of the cleanup site location where TCE industrial treatment or pretreatment occurs must comply with the wastewater worker protection requirements in § 751.319.

(iii) The owner or operator of publicly owned treatment works that receive TCE wastewater must comply with the worker protection requirements in § 751.319.

(iv) The owner or operator of the location where such disposal of TCE occurs must comply with the recordkeeping requirements in § 751.323.

[FR Doc. 2024–29274 Filed 12–16–24; 8:45 am]

BILLING CODE 6560–50–P



FEDERAL REGISTER

Vol. 89 Tuesday,
No. 242 December 17, 2024

Part IX

Department of Justice

Drug Enforcement Administration

Final Adjusted Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024; Established Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2025; Notices

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1228F]

Final Adjusted Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: This final order establishes the final adjusted 2024 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: This order is effective December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Heather E. Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Legal Authority

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish production quotas for each basic class of controlled substances listed in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the Drug Enforcement Administration (DEA) pursuant to 28 CFR 0.100.

Background

DEA published the 2024 established aggregate production quotas (APQs) for controlled substances in schedules I and II and for the assessment of annual needs (AAN) for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine in the **Federal Register** (FR) on January 3, 2024.[1] This notice stated that the Administrator would adjust, as needed, the established APQ in 2024 in accordance with 21 CFR 1303.13 and 21 CFR 1315.13. DEA is committed to preventing and limiting diversion by enforcing laws and regulations regarding controlled substances and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, while meeting the legitimate medical, scientific, and export needs of the United States.

The 2024 proposed adjusted APQ for controlled substances in schedules I and II and AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine were subsequently published in the **Federal Register** on September 25, 2024[2] after consideration of the criteria outlined in that notice. All interested persons were invited to comment on or object to the proposed APQs and AANs on or before October 25, 2024. Prior to this notice, DEA also published a final order to increase the 2024 APQ for lisdexamfetamine and d-amphetamine (for conversion).[3] Therefore, DEA proposed no additional changes for those substances.

Comments Received

DEA received 20 timely comments in response to the September **Federal Register** notice, from chronic pain patients and DEA-registered entities. The comments included requests to ensure sufficient availability in the APQ for select schedule I and schedule II controlled substances including increasing specific APQs if necessary; requests that DEA utilize its regulatory authority in additional ways; opioid shortage concerns; and comments outside the scope of this final order. DEA restricted three comments from public view due to confidential business information and/or confidential personal identifying information.

DEA's Regulatory Authority

Issue: DEA-registered manufacturers requested the APQs for 4-Anilino-N-Phenethyl-4-Piperidine, fentanyl, hydromorphone, morphine (for conversion), oxymorphone (for conversion), and sufentanil be reviewed for sufficiency and adjusted if necessary.

DEA Response: DEA sets the APQs in a manner to meet the estimated medical, scientific, research, industrial needs of the United States, lawful export requirements, and for the establishment and maintenance of reserve stocks. As of the date the comment period closed for the proposed adjusted 2024 APQ and AAN, DEA believes that the proposed adjusted 2024 APQs are sufficient to meet the current estimated 2024 legitimate medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and to provide for adequate reserve stock.

Issue: A DEA-registered manufacturer suggested several changes that it believes are necessary to deter companies from using the quota process to gain competitive advantage and to ensure that quota is available when supply chain circumstances change. Among these, the commenter suggested that DEA needs to obtain authority to reallocate manufacturing quota from one registered bulk manufacturer to another in the event that a finished dosage form manufacturer wishes, midyear, to procure bulk material from a different bulk manufacturer than originally planned.

DEA Response: This comment is outside the scope of the current action, but DEA notes the commenter's suggestion for future consideration. DEA currently can reallocate or revoke quotas in specific circumstances as discussed in 21 CFR 1303.26 and 1303.36.

Issue: The same commenter who raised the immediately preceding issue also suggested that DEA should change the procurement quota application form (DEA Form 250) so that applicants can specify multiple suppliers from which they may procure a basic class of bulk controlled substance, as well as the estimated timeframe for receipt of the basic class from each supplier.

DEA Response: The current procurement quota application form (DEA Form 250) allows for the applicants to specify multiple suppliers from which they may procure a basic class of bulk controlled substance, as well as the estimated timeframe for receipt of the basic class from each supplier.

Issue: The same commenter who raised the two immediately preceding issues suggested that DEA specify, when granting quota, to which specific finished dosage forms the quota is to be applied and the proportion of the authorized amount that is to be used toward each identified dosage form. The manufacturer further requested that DEA verify during DEA inspections the manufacturer's compliance with the details specified in the quota grant.

DEA Response: In 21 U.S.C. 826(a)(2), Congress granted DEA the authority to delineate quota by pharmaceutical dosage form (tablets, capsules, oral

[1] Established Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024, 89 FR 407.

[2] Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024, 89 FR 78764 (September 25, 2024).

[3] Adjustment to the Aggregate Production Quota for Lisdexamfetamine and d-Amphetamine (for Conversion) for 2024, 89 FR 72424 (Sept. 5, 2024).

liquids, etc.) if DEA determines it will assist in avoiding overproduction, shortages, or diversion of a controlled substance. DEA currently believes the designation of quota by dosage forms at the bulk manufacturing level could lead to unforeseen circumstances such as interference with production schedules or hindrance of the supply chain. Moreover, in compliance with Congress's directive, DEA would need to consider whether the application of such detail to quotas would assist in avoiding overproduction, shortages, or diversion.

When a manufacturer has several customers that use the same active pharmaceutical ingredient (API) to manufacture similar dosage forms (*i.e.* brand and generic formulations), the terms of the contractual agreements govern the transaction in normal circumstances. DEA does not grant quota to fulfill specific business contracts between registrants; rather, DEA grants quota to meet the legitimate medical, scientific, research, and export requirements while ensuring the ability to maintain adequate reserve stock.

Issue: The same commenter who raised the three immediately preceding issues suggested that DEA assess ''quota usage'' on a quarterly or semi-annual basis to verify that manufacturers timely distribute materials that they are authorized under quota to manufacture, and to require companies to surrender unused quotas so that those unused amounts can be reassigned to others who can then supply the market.

DEA Response: DEA has in the past and will continue to ask manufacturers to surrender quota that they will not be able to utilize in a timely manner (*e.g.,* due to production scheduling issues, malfunctioning of manufacturing lines, etc.). While DEA will note for potential future consideration the commenter's suggestion that DEA periodically assess quota usage, in a series of meetings held in the spring of 2024, numerous API and dosage form manufacturers informed DEA that a requirement to utilize quota quarterly would not be feasible because of limited capacity of production lines and manufacturers' strict adherence to production schedules. As a result of the discussion, DEA is allotting commercial manufacturing procurement quotas for Schedule II non-injectable products on a semi-annual basis.

Opioid Shortage Concerns

Issue: Nine commenters expressed general concerns regarding a perceived nationwide shortage of opioid medication due to patients experiencing intermittent out-of-stock or back-ordered situations at pharmacies while attempting to fill their prescriptions.

DEA Response: DEA utilizes the available, reliable data and information received by the agency in advance of publication; however drug shortages may occur due to factors outside of DEA's control such as manufacturing and quality problems, processing delays, supply chain disruptions, or discontinuations. In such circumstances, if the drug manufacturer notifies the U.S. Food and Drug Administration (FDA) Drug Shortage Staff, FDA will coordinate with DEA to address and minimize the impact of drug shortages if both agencies believe action is warranted. Currently, FDA has not issued notice of any nationwide shortages of the type of opioid medications mentioned by these commenters.

Out of Scope Comments: DEA received other comments that were general in nature and raised issues with respect to specific medical illnesses and medical treatments. All of the issues raised are outside of the scope of this final order for 2024 and do not impact the analysis involved in finalizing the 2024 APQs.

Analysis for Final Adjusted 2024 Aggregate Production Quotas and Assessment of Annual Needs

In determining the final adjusted 2024 APQs and AANs, DEA has considered the above comments relevant to this final order for calendar year 2024, along with the factors set forth in 21 CFR 1303.13 and 21 CFR 1315.13, in accordance with 21 U.S.C. 826(a). DEA has also considered other relevant factors, including the 2023 year-end inventories, initial 2024 manufacturing and import quotas, 2024 export requirements, actual and projected 2024 sales, research and product development requirements, additional applications received, and the extent of any diversion of the controlled substance in the class. Based on all of the above, the Administrator is finalizing the adjusted APQs in the same amounts as proposed.

On July 29, 2024, DEA published a temporary scheduling order placing N-desethyl isotonitazene and N-piperidinyl etonitazene in schedule I of the CSA,[4] and on October 25, 2024, DEA published a final rule placing ethylphenidate in schedule I of the CSA,[5] making all regulatory controls pertaining to schedule I controlled substances applicable to the manufacture of these substances, including the requirement to establish an APQ pursuant to 21 U.S.C. 826 and 21 CFR part 1303. This final order establishes an APQ for these substances for the first time.

Pursuant to the above, the Administrator hereby finalizes the 2024 APQs for the following schedule I and II controlled substances and the 2024 AANs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

BILLING CODE 4410–P

[4] Schedules of Controlled Substances: Temporary Placement of N-Desethyl Isotonitazene and N-Piperidinyl Etonitazene in Schedule I, 89 FR 60817.

[5] Schedules of Controlled Substances: Placement of Ethylphenidate in Schedule I, 89 FR 84281.

Basic Class	Final Adjusted 2024 Quotas (g)
Schedule I	
-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20
1-(1-Phenylcyclohexyl)pyrrolidine	30
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30
1-[1-(2-Thienyl)cyclohexyl]piperidine	15
2'-fluoro 2-fluorofentanyl	30
1-Benzylpiperazine	25
1-Methyl-4-phenyl-4-propionoxypiperidine	10
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	30
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	30
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P)	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	100
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)	30
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)	30
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25
2,5-Dimethoxy-4-n-propylthiophenethylamine	25
2,5-Dimethoxyamphetamine	25
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)	30
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	30
2-Methyl AP-237	30
3,4,5-Trimethoxyamphetamine	30
3,4-Methylenedioxyamphetamine (MDA)	12,000
3,4-Methylenedioxymethamphetamine (MDMA)	12,000
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40
3,4-Methylenedioxy-N-methylcathinone (methylone)	5,200
3,4-Methylenedioxypyrovalerone (MDPV)	35

3-FMC; 3-Fluoro-N-methylcathinone	25
3-Methylfentanyl	30
3-Methylmethcathinone	30
3-Methylthiofentanyl	30
4,4′-Dimethylaminorex	30
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	5,100
4-Chloro-alpha-pyrrolidinovalerophenone (4-chloro-alpha-PVP)	25
4-CN-Cumyl-Butinaca	25
4-Fluoroisobutyryl fentanyl	30
4F-MDMB-BINACA	30
4F-MDMB-BUTICA	30
4-FMC; Flephedrone	25
4-MEC; 4-Methyl-N-ethylcathinone	25
4-Methoxyamphetamine	150
4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (alpha-PiHP)	30
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25
4-Methylaminorex	25
4-Methyl-N-methylcathinone (mephedrone)	45
4-Methyl-alpha-ethylaminopentiophenone (4-MEAP)	25
4-Methyl-alpha-pyrrolidinohexiophenone (MPHP)	25
4′-Methyl acetyl fentanyl	30
4-Methyl-α-pyrrolidinopropiophenone (4-MePPP)	25
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	40
5F-AB-PINACA ; (1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25
5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	25
5F-CUMYL-P7AICA; 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3carboximide	25
5F-CUMYL-PINACA	25
5F-EDMB-PICA	30
5F-EDMB-PINACA	25
5F-MDMB-PICA	25
5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	25
5F-APINACA; 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	25
5-Fluoro-PB-22; 5F-PB-22	25

5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	25
5-Methoxy-3,4-methylenedioxyamphetamine	25
5-Methoxy-N,N-diisopropyltryptamine	25
5-Methoxy-N,N-dimethyltryptamine	11,000
AB-CHMINACA	30
AB-FUBINACA	50
AB-PINACA	30
ADB-4en-PINACA	30
ADB-BUTINACA	30
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	30
Acetorphine	25
Acetyl Fentanyl	100
Acetyl-alpha-methylfentanyl	30
Acetyldihydrocodeine	30
Acetylmethadol	25
Acryl Fentanyl	25
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	50
AH-7921	30
All other tetrahydrocannabinol	1,166,130
Allylprodine	25
Alphacetylmethadol	25
alpha-Ethyltryptamine	25
Alphameprodine	25
Alphamethadol	25
alpha-Methylfentanyl	30
alpha-Methylthiofentanyl	30
alpha-Methyltryptamine (AMT)	25
alpha-Pyrrolidinobutiophenone (α-PBP)	25
alpha-pyrrolidinoheptaphenone (PV8)	25
alpha-pyrrolidinohexabophenone (alpha-PHP)	25
alpha-Pyrrolidinopentiophenone (α-PVP)	25
Amineptine	30
Aminorex	25
Anileridine	20
APINCA, AKB48 (N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	25
Benzethidine	25
Benzylmorphine	30
Betacetylmethadol	25
beta-Hydroxy-3-methylfentanyl	30
beta-Hydroxyfentanyl	30

beta-Hydroxythiofentanyl	30
beta-Methyl fentanyl	30
beta′-Phenyl fentanyl	30
Betameprodine	25
Betamethadol	4
Betaprodine	25
Brorphine	30
Bufotenine	15
Butonitazene	30
Butylone	25
Butyryl fentanyl	30
Cathinone	40
Clonazolam	30
Clonitazene	25
Codeine methylbromide	30
Codeine-N-oxide	192
Crotonyl Fentanyl	25
CUMYL–PEGACLONE	30
Cyclopentyl Fentanyl	30
Cyclopropyl Fentanyl	20
Cyprenorphine	25
d-9-THC	1,523,040
Desomorphine	25
Dextromoramide	25
Diapromide	20
Diclazepam	30
Diethylthiambutene	20
Diethyltryptamine	25
Difenoxin	9,300
Dihydromorphine	639,954
Dimenoxadol	25
Dimepheptanol	25
Dimethylthiambutene	20
Dimethyltryptamine	11,000
Dioxyaphetyl butyrate	25
Dipipanone	25
Drotebanol	25
Ethylmethylthiambutene	25
Ethylone	25
Ethylphenidate	30
Etizolam	30
Etodesnitazene	30
Etonitazene	25
Etorphine	30
Etoxeridine	25

Eutylone	30
Fenethylline	30
Fentanyl carbamate	30
Fentanyl related substances	600
Flualprazolam	30
Flubromazolam	30
Flunitazene	30
FUB-144	25
FUB-AKB48	25
Fub-AMB, MMB-Fubinaca, AMB-Fubinaca	25
Furanyl fentanyl	30
Furethidine	25
gamma-Hydroxybutyric acid	29,417,000
Heroin	150
Hydromorphinol	40
Hydroxypethidine	25
Ibogaine	150
Isobutyryl Fentanyl	25
Isotonitazine	25
JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	45
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	45
JWH-081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole)	30
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30
Ketobemidone	30
Levomoramide	25
Levophenyacylmorphan	25
Lysergic acid diethylamide (LSD)	1,200
MAB-CHMINACA; ADB-CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	30
MDMB-4en-PINACA	30
MDMB-CHMICA; MMB-CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	30
MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
MMB-CHMICA-(AMB-CHIMCA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-	25

methylbutanoate	
MMB-FUBICA	30
Marijuana	6,675,000
Marijuana extract	1,000,000
Mecloqualone	30
Mescaline	1,200
Mesocarb	30
Methaqualone	60
Methcathinone	25
Methiopropamine	30
Methoxetamine	30
Methoxyacetyl fentanyl	30
Methyldesorphine	5
Methyldihydromorphine	25
Metodesnitazene	30
Metonitazene	30
Morpheridine	25
Morphine methylbromide	5
Morphine methylsulfonate	5
Morphine-N-oxide	150
MT-45	30
Myrophine	25
NM2201: Naphthalen-1-yl 1-(5-fluorpentyl)-1H-indole-3-carboxylate	25
N,N-Dimethylamphetamine	25
Naphyronc	25
N-Ethyl-1-phenylcyclohexylamine	25
N-Ethyl-3-piperidyl benzilate	10
N-Ethylamphetamine	24
N-Ethylhexedrone	25
N-Ethylpentylone, ephylone	30
N-Hydroxy-3,4-methylenedioxyamphetamine	24
Nicocodeine	25
Nicomorphine	25
N-Desethyl Isotonitazene	30
N-methyl-3-piperidyl benzilate	30
N-Piperidinyl Etonitazene	30
N-Pyrrolidino Etonitazene	30
Noracymcthadol	25
Norlevorphanol	2,550
Normethadone	25
Normorphine	40
Norpipanone	25
Ocfentanil	25
ortho-Fluoroacryl fentanyl	30

ortho-Fluorobutyryl fentanyl	30
ortho-Fluorofentanyl,2-Fluorofentanyl	30
ortho-Fluoroisobutyryl fentanyl	30
ortho-Methyl acetylfentanyl	30
ortho-Methyl methoxyacetyl fentanyl	30
Para-Chlorisobutyrl fentanyl	30
Para-flourobutyryl fentanyl	25
Para-fluorofentanyl	25
para-Fluoro furanyl fentanyl	30
Para-Methoxybutyrl fentanyl	30
Para-methoxymethamphetamine	30
para-Methylfentanyl	30
Parahexyl	5
PB-22; QUPIC	20
Pentedrone	25
Pentylone	25
Phenadoxone	25
Phenampromide	25
Phenomorphan	25
Phenoperidine	25
Phenyl fentanyl	30
Pholcodine	5
Piritramide	25
Proheptazine	25
Properidine	25
Propiram	25
Protonitazene	30
Psilocybin	30,000
Psilocyn	36,000
Racemoramide	25
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45
SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30
Tetrahydrofuranyl fentanyl	15
Thebacon	25
Thiafentanil	25
Thiofentanyl	25
Thiofuranyl fentanyl	30
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30
Tilidine	25
Trimeperidine	25
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25
U-47700	30

Valeryl fentanyl	25
Zipeprol	30
Schedule II	
1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile	25
4-Anilino-N-phenethyl-4-piperidine (ANPP)	937,874
Alfentanil	5,000
Alphaprodine	25
Amobarbital	20,100
Bezitramide	25
Carfentanil	20
Cocaine	60,492
Codeine (for conversion)	942,452
Codeine (for sale)	19,262,957
d-amphetamine (for sale)	21,200,000
d,l-amphetamine	21,200,000
d-amphetamine (for conversion)	23,688,235
Dexmethylphenidate (for sale)	6,200,000
Dexmethylphenidate (for conversion)	5,374,683
Dextropropoxyphene	35
Dihydrocodeine	115,227
Dihydroctorphine	25
Diphenoxylate (for conversion)	14,100
Diphenoxylate (for sale)	770,800
Ecgonine	60,492
Ethylmorphine	30
Etorphine hydrochloride	32
Fentanyl	731,341
Glutethimide	25
Hydrocodone (for conversion)	1,250
Hydrocodone (for sale)	27,121,498
Hydromorphone	1,951,508
Isomethadone	30
L-amphetamine	30
Levo-alphacetylmethadol (LAAM)	25
Levomethorphan	30
Levorphanol	20,000
Lisdexamfetamine	32,736,000
Meperidine	681,184
Meperidine Intermediate-A	30
Meperidine Intermediate-B	30
Meperidine Intermediate-C	30
Metazocine	15
Methadone (for sale)	25,619,700

Methadone Intermediate	27,673,600
d,l-Methamphetamine	150
d-methamphetamine (for conversion)	485,020
d-methamphetamine (for sale)	47,000
l-methamphetamine	587,229
Methylphenidate (for sale)	53,283,000
Methylphenidate (for conversion)	19,975,468
Metopon	25
Moramide-intermediate	25
Morphine (for conversion)	2,393,200
Morphine (for sale)	20,805,957
Nabilone	62,000
Norfentanyl	25
Noroxymorphone (for conversion)	24,756,979
Noroxymorphone (for sale)	1,000
Oliceridine	25,100
Opium (powder)	250,000
Opium (tincture)	530,837
Oripavine	37,721,950
Oxycodone (for conversion)	437,827
Oxycodone (for sale)	53,584,449
Oxymorphone (for conversion)	31,773,105
Oxymorphone (for sale)	464,464
Pentobarbital	40,000,000
Phenazocine	25
Phencyclidine	35
Phenmetrazine	25
Phenylacetone	100
Piminodine	25
Racemethorphan	5
Racemorphan	5
Remifentanil	3,000
Secobarbital	172,100
Sufentanil	4,000
Tapentadol	10,390,226
Thebaine	57,137,944
List I Chemicals	
Ephedrine (for conversion)	41,100
Ephedrine (for sale)	3,933,336
Phenylpropanolamine (for conversion)	14,878,320
Phenylpropanolamine (for sale)	7,990,000
Pseudoephedrine (for conversion)	1,000
Pseudoephedrine (for sale)	186,617,466

BILLING CODE 4410–C

The Administrator also establishes that APQs for all other schedule I and II controlled substances included in 21

CFR 1308.11 and 1308.12 remain at zero.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 13, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–30019 Filed 12–16–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1413E]

Established Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2025

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: This final order establishes the initial 2025 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: This order is effective December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Heather E. Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, VA 22152, Telephone: (571) 776–3882.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish production quotas for each basic class of controlled substance listed in schedule I and II and ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of the Drug Enforcement Administration (DEA) pursuant to 28 CFR 0.100.

II. Background

The 2025 aggregate production quotas (APQ) and assessment of annual needs (AAN) represent those quantities of schedule I and II controlled substances and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine that may be manufactured in the United States in 2025, in order to provide for the estimated medical, scientific, research, and industrial needs of the U.S., lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine, but do not include imports of controlled substances for use in industrial processes.

On September 25, 2024, a notice titled ''Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2025'' was published in the **Federal Register**.[1] This notice proposed the 2025 APQs for each basic class of controlled substance listed in schedules I and II and the 2025 AANs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. All interested persons were invited to comment on or object to the proposed APQs and the proposed AANs on or before October 25, 2024.

III. Comments Received

Within the public comment period, DEA received 1,882 comments from DEA registrants, chronic pain patients, patients with attention deficit/hyperactivity disorder (ADHD), pain advocacy associations, U.S. professional associations, U.S. doctors and nurses, and others. The comments included concerns about potential domestic opioid drug shortages due to further quota reductions; patient difficulty filling authorized opioid prescriptions; increases in drug overdose deaths despite a continued decrease in production quotas; requests for an extension to the comment period; stimulant drug shortages in the United States; concerns that medical professionals might be impeded from exercising their medical expertise regarding opioid prescriptions; requests for a public hearing; and comments not pertaining to DEA-regulated activities. While all comments were posted to regulations.gov, DEA restricted the attachments to 10 comments from public view due to confidential business information and/or confidential personal identifying information.

Opioid Adequacy

Issue (National Production Levels of Proposed APQs for Opioids Compared to 2024 levels): DEA received a significant number of comments from pain advocacy groups, hospital associations, health professionals, and others who raised concerns over the proposed APQs for certain opioids in 2025, which were proposed at a level lower than the established production levels for 2024. The commenters suggested that the proposed APQ levels could exacerbate shortages experienced in 2024.

DEA Response: DEA considers numerous factors in determining an APQ, including total net disposal of the class by all manufacturers during the current and two preceding years, trends in the national rate of net disposal of the class, total actual or estimated inventories of the class and of all substances manufactured from the class, information obtained from the Food and Drug Administration (FDA), and changes in the currently accepted medical use in treatment. 21 U.S.C. 826(a); 21 CFR 1303.11(b). Additional factors considered can be found in 21 CFR 1303.11(b). After considering all of the relevant factors, DEA has determined that the proposed APQs for the five covered controlled substances—fentanyl, hydrocodone, hydromorphone, oxycodone and oxymorphone—are sufficient to meet the forecasted legitimate domestic and foreign needs and allow for maintenance of reserve stocks. These considerations also lead DEA to conclude that U.S. manufacturers will need to manufacture approximately the same amount of those opioids in 2025 as in 2024 in order to meet legitimate needs.

Accordingly, DEA proposed the 2025 APQs for those five substances at the same level as in DEA's proposed revised APQs for 2024 published on September

[1] Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2025, 89 FR 78772 (September 25, 2024).

25, 2024.[2] In that publication, DEA proposed minor reductions to the 2024 APQs for 4 of the 5 substances to reflect DEA's updated calculations of diversion, as required by Congress. Specifically, Congress requires DEA to make appropriate quota reductions ''from the quota [DEA] would have otherwise established had such diversion not been considered.'' [3] DEA applied the same estimates of diversion in proposing and finalizing the 2025 APQs and has reduced the 2025 APQs accordingly. The APQs for those five controlled substances are lower than the initial 2024 established APQs by approximately 0.1% combined. These decreases in the APQs will not affect the ability of the APQs to provide all material necessary for the estimated medical, scientific, research, and industrial needs of the U.S., lawful export requirements, and the establishment and maintenance of reserve stocks.

Issue (Medication Out of Stock at Pharmacy Level): DEA received comments questioning whether the 2025 proposed APQs for Schedule II opioids will be adequate to meet legitimate medical needs of patients. Commenters said that because of decreases in APQs for specific opioids, they have had difficulty filling legitimate prescriptions at pharmacies. These issues have negatively impacted their quality of life and caused mental health-related issues, including the possibility of suicide.

DEA Response: DEA is committed to ensuring an adequate and uninterrupted supply of controlled substances in order to meet legitimate medical, scientific, and export needs of the United States. DEA sets the APQs for controlled substances based on the available data and information received at that specific point in time; however, subsequent factors outside of DEA's control, including changes to manufacturers' business practices may emerge afterwards and potentially contribute to a temporary lack of inventory of controlled substances at the point of dispensation. In recent years, these factors have included labor shortages and a lack of production capacity. In such circumstances, DEA, in coordination with FDA, can utilize tools under the CSA to try to prevent or alleviate drug shortages so that patients are able to fill legitimate prescriptions for controlled substances without undue delay. Additionally, if patients are faced with a delay in receiving their medications, the patients may request a one-time transfer of initial dispensing of an electronic prescription for Schedules II—V controlled substances from one retail pharmacy to another retail pharmacy if authorized under state law.[4] If the medication is a controlled substance in Schedules III—V and includes authorized refills, the refills can also be transferred with the initial prescription to the receiving pharmacy.

Issue (Nationwide Opioid Shortages): DEA received many comments stating there is a nationwide shortage of opioid medication because the commenters' local pharmacies were often out of stock, forcing the commenters to spend significant time contacting additional pharmacies, and traveling further to get prescriptions filled. Commenters stated that many times they were unsuccessful in their attempts to fill the prescription.

DEA Response: Drug shortages may occur due to factors outside of DEA's control such as manufacturing and quality problems, processing delays, supply chain disruptions, or discontinuations. In such circumstances, if the drug manufacturer notifies the FDA Drug Shortage Staff, FDA will coordinate with DEA to address and minimize the impact of drug shortages if both agencies believe action is warranted. Currently, FDA has not issued notice of any nationwide shortages of the types of opioid medications mentioned by these commenters.

Issue (Failure to Acknowledge Drug Shortages): One commenter expressed that DEA is failing to acknowledge and address opioid drug shortages that are complicating access to prescribed medications, effectively creating conditions such as ''pharmacy deserts.''

DEA Response: DEA is aware of specific product shortages of pain medicines and works with FDA and DEA-registered manufacturers to alleviate them. Patients and medical professionals may notice specific drug products are out of stock in particular areas; however, DEA cannot dictate DEA registrants' distributions of drug products. If a drug manufacturer notifies FDA of a manufacturing-related shortage, FDA and DEA can take additional steps to help alleviate the shortage if action is warranted.

Issue (Patients Switching to Illicit Fentanyl or Medications Obtained from Illegal Sources): Several commenters expressed concerns that because of DEA's reduction of quotas for pain relieving controlled substances, chronic pain sufferers who were unable to fill their legitimate prescriptions eventually turned to illegal fentanyl or medications obtained from illegitimate sources as a substitute relief that could increase the risk of overdose death. These commenters stated that overdose deaths in the United States continue to rise because of illegal fentanyl or illegitimate medications, not from pharmaceutical medications prescribed to chronic pain patients.

DEA Response: While overdose deaths may occur because of use of illicit substances, DEA's quota regulations have been implemented to prevent misuse and diversion of pharmaceutical controlled substances. In this way, these quotas can reduce the occurrence of overdose and death from the use of legitimate controlled substances. Patients should work closely with their providers to utilize other FDA-approved medications for their conditions and fill their prescriptions only from DEA-registered pharmacies. The only safe medications containing controlled substances are ones prescribed by a trusted, DEA-registered medical professional and dispensed by a licensed pharmacist at a DEA-registered pharmacy. The medications received from unregistered internet sources may, in fact, be manufactured or laced with illicit substances including illicit fentanyl, which contributes to rates of overdose deaths.

Issue (Opioid Prescribing Hesitancy): Many commenters, mostly self-identified chronic pain patients, expressed that the goal of the 2016 Centers for Disease Control and Prevention Guidelines was to decrease opioid overdoses, but instead there has been an increase in overdoses nationwide of over 400 percent due to illegal fentanyl or illegally manufactured pain pills. Commenters stated that many chronic pain patients have been harmed, and some have died by suicide, due to the inability to get prescriptions because of the APQ reductions made by DEA. Many commenters also stated that restrictions imposed by DEA have caused opioid medications to be under-prescribed due to fear of prosecution. Commenters said doctors should have latitude in making treatment decisions to prescribe opioid pain medications based on individual patient needs.

DEA Response: Pursuant to 21 U.S.C. 826(i), DEA is mandated to estimate diversion for 5 controlled substances—

[2] *See* Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024, 89 FR 78764 (Sept. 25, 2024).

[3] 21 U.S.C. 826(i)(1)(C).

[4] *See Revised Regulation Allows DEA-Registered Pharmacies to Transfer Electronic Prescriptions at a Patient's Request,* DEA.gov (Sept. 1, 2023), *https://www.dea.gov/stories/2023/2023-09/2023-09-01/revised-regulation-allows-dea-registered-pharmacies-transfer.*

fentanyl, hydrocodone, hydromorphone, oxycodone and oxymorphone—and this estimation includes the consideration of rates of overdose deaths. While overdose deaths may occur as a result of the use of illegal fentanyl or illegally manufactured pain medications, quotas are being set by DEA to prevent misuse and diversion of pharmaceutical controlled substances, and thus reduce the occurrence of overdose and death from the use of legitimate controlled substances. Additionally, DEA's regulations do not impose restrictions on the amount and the type of medication that licensed practitioners can prescribe. DEA has consistently emphasized and supported the authority of individual practitioners under the CSA to administer, dispense, and prescribe controlled substances for the legitimate treatment of pain within acceptable medical standards, as outlined in DEA's policy statement published in the **Federal Register** on September 6, 2006, titled ''Dispensing Controlled Substances for the Treatment of Pain.'' [5]

Attention Deficit/Hyperactivity Disorder (ADHD) Medication

Issue (Shortage): DEA received comments expressing general concerns regarding the ongoing drug shortages for stimulant medications used in the treatment of ADHD.

DEA Response: DEA is committed to ensuring an adequate and uninterrupted supply of controlled substances in order to meet the estimated legitimate medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. DEA sets the APQs to provide for all legitimate medical purposes and for anticipated foreign demand. Additionally, DEA and FDA coordinate efforts to prevent or alleviate drug shortages. Such efforts may include the adjustment of the APQs and individual domestic manufacturers' quotas, FDA's approval of additional market competitors, and coordination between the agencies to allow importation of foreign-manufactured drug products that meet FDA approval. If the actual prescribing rates of these substances are significantly higher than the 2025 estimates of medical needs, the Administrator has the authority to increase the aggregate production quota at any time. 21 CFR 1303.13(a).

Insufficient Gamma Hydroxybutyric Acid (GHB)

Issue (GHB APQ Insufficient to Support New FDA-Approved Generic Medications Entering the Market as well as Existing Branded Drug Products): DEA received one comment from a law firm that voiced concern that the proposed 2025 GHB APQ will be insufficient to provide for existing branded products on the market as well as emerging generic products with anticipated FDA-approval dates near the end of calendar year 2025. The commenter noted that FDA has expanded the conditions for which the branded products can be prescribed as part of an effective treatment.

DEA response: DEA is aware of the current FDA-approved GHB branded drug products and their exclusivity timelines as well as the numerous generic drug applications that are pending before FDA for approval. The 2025 APQ for GHB is being finalized at 49,675,266 grams, which is 20,258,266 grams higher than the 2024 APQ. This equates to an almost 70 percent increase in the amount of bulk active pharmaceutical ingredient (API) that can be made available in 2025 to provide for legitimate medical need, as compared to 2024. This additional API can be utilized in the manufacture of existing drug products on the market, product development activities leading to FDA-approved generic drugs, as well as inventory necessary to begin calendar year 2026 without shortages. The 2025 APQ is based on all available data including company-submitted information, U.S. export data, U.S. import data, and FDA drug data highlighting emerging and changing drug products containing GHB prescribed to the relevant patient population.

Diversion Estimates

Issue (Impact of Diversion Estimate on Opioids): Commenters voiced concern with the ''red flags'' associated with diversion data gathered from state Prescription Drug Monitoring Program (PDMP) data, which DEA uses to estimate diversion for the five covered controlled substances. Commenters worried that repeated attempts to fill prescriptions would be shown in the state PDMP data and result in concerns that they were engaged in ''doctor shopping,'' and their conduct could be misperceived as a ''red flag'' of actively seeking prescribed covered controlled substances from three or more prescribers in a 90-day period. Commenters were concerned that such misperceptions could render them unable to fill validly issued prescriptions.

DEA Response: In the event that a patient's general pharmacy does not have sufficient stock of a particular drug, a patient visiting multiple pharmacies to fill a single prescription would not be included in the ''red flag'' metric of patients actively seeking prescribed covered controlled substances from three or more prescribers in a 90-day period. The state PDMP data submitted was adequate to allow DEA to draw reliable inferences regarding the state and U.S. populations. The sample is large enough to allow DEA to accurately generalize the data to the whole population of the United States for use in the calculation of estimated national levels of diversion of the covered controlled substances. DEA developed the metric of patients prescribed covered controlled substances from three or more prescribers in a 90-day period to identify potential doctor shopping, a common technique used to obtain large amounts of controlled substances for the purpose of abuse or diversion. Federal administrative and criminal case law demonstrates that multiple prescriptions from multiple prescribers in a short timeframe is a reliable indicator of diversion.[6] In addition, DEA did not consider prescriptions written for the five covered controlled substances in quantities lower than 240 morphine milligram equivalents (MME) daily because some patients, including oncology patients in particular, have legitimate medical needs for covered controlled substance prescriptions in excess of 90 MME daily. DEA did not wish to inadvertently include legitimate prescriptions for these patients in its calculation of diversion. Daily dosages higher than 240 MME place individuals at a higher risk of overdose and death, and correlate with a heightened risk of diversion. DEA received aggregated data from state PDMPs that reflected only individual filled prescriptions.

Data Collection and Analysis

Issue (Data Accuracy): Several commenters stated that FDA's estimation of medical needs and DEA's data collection process are flawed and inaccurate.

DEA Response: FDA utilizes a variety of data sources in developing its estimates of domestic medical needs. When determining the 2025 APQs, DEA considered the estimation of domestic medical needs data provided by FDA,

[5] Dispensing Controlled Substances for the Treatment of Pain, 71 FR 52716 (September 6, 2006).

[6] The Medicine Shoppe, 29 FR 59504, 59507, 59512–13 (2014); Holiday CVS, LLC, d/b/a CVS Pharmacy Nos. 219 and 5195, 57 FR 62316 (2012).

and also considered other data sources including prescriptions dispensed in prior and current years reported in IQVIA, research and clinical trial information from DEA-registered researchers and manufacturers, information provided in quota applications from DEA-registered manufacturers, as well as historic and current year export data and future estimations of export requirements. DEA is actively reevaluating and improving the data collection process to ensure that the APQs are set at an adequate level to meet legitimate medical, scientific, research, and export needs while establishing and maintaining reserve stocks.

Issue (Lack of Data Transparency): Two commenters stated that there is a lack of transparency in the quota setting process.

DEA Response: DEA is considering methods that might increase transparency in its quota setting process. Future regulatory proposals may include steps such as public notification and an opportunity for public input when prescribing rates for controlled substances substantially deviate from FDA's estimate of medical needs. DEA must strike a balance between increasing transparency and complying with the applicable laws and regulations aimed at protecting confidential business and patient information.

Comments and Quota Applications From DEA-Registered Manufacturers

Issue: DEA received additional quota applications as well as comments from DEA-registered manufacturers regarding a specific schedule I controlled substance, requesting the APQs be established at a sufficient level to allow for their manufacturing to meet medical and scientific needs.

DEA Response: DEA considered the additional quota applications and comments from DEA-registered manufacturers and determined that DEA's APQ for dimethyltryptamine (DMT) should be increased to support legitimate research and scientific efforts toward an FDA-approved drug product. The increase is reflected below in the section titled, ''Determination of 2025 Aggregate Production Quotas and Assessment of Annual Needs.''

Request for Hearing and Extension of Comment Period

Issue: Several individual commenters suggested that DEA consider holding a public hearing regarding the APQs and AANs.

DEA Response: The decision whether to grant a hearing on the issues raised by the commenters lies solely within the discretion of the Administrator.[7] While hearings are required when requested by states in certain situations, these requests were not submitted by states. These requests did not include any evidence that would lead to the conclusion that a hearing is necessary or warranted. DEA has addressed specific points raised by the commenters in the issues and responses above.

Issue: DEA received three comments requesting an extension of the comment period so the commenters can better research the issues and submit additional comments.

DEA Response: DEA declines to extend the comment period. The number and scope of comments indicate that the provided 30 days was adequate. Additionally, DEA may propose to adjust these established APQs and AANs at any time after they have been established, at which time additional comments will be accepted.[8]

Out of Scope Comments

DEA received comments that are outside the scope of this order. The comments were general in nature and raised issues with respect to specific medical illnesses, medical treatments and medication costs. These comments do not impact the analysis involved in establishing the 2025 APQs.

IV. Determination of 2025 Aggregate Production Quotas and Assessment of Annual Needs

In determining the established 2025 APQs and AANs, DEA has considered the above comments along with the factors set forth in 21 CFR 1303.11 and 21 CFR 1315.11, in accordance with 21 U.S.C. 826(a). These factors include, but are not limited to, the 2024 manufacturing quotas, current 2024 sales and inventories, anticipated 2025 export requirements, industrial use, additional applications for 2025 quotas, and information on research and product development requirements.

On October 25, 2024, DEA published a final rule placing ethylphenidate in schedule I of the CSA,[9] making all regulatory controls pertaining to schedule I controlled substances applicable to the manufacture of these substances, including the requirement to establish an aggregate production quota pursuant to 21 U.S.C. 826 and 21 CFR part 1303. This final order establishes an aggregate production quota for this substance.

Estimates of Diversion

As specified in the proposal, and as required by 21 U.S.C. 826(i), DEA calculated a national diversion estimate for each of the five covered controlled substances. This data, which remains unchanged, was published in the *Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2025.*[10]

In accordance with 21 U.S.C. 826, 21 CFR 1303.11, and 21 CFR 1315.11, the Administrator hereby establishes the 2025 APQs for the following schedule I and II controlled substances and the 2025 AANs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

BILLING CODE P

[7] 21 CFR 1303.11(c).

[8] 21 CFR 1303.13.

[9] Schedules of Controlled Substances: Placement of Ethylphenidate in Schedule I, 89 FR 84281 (October 22, 2024).

[10] 89 FR 78772 (Sept. 25, 2024).

Basic Class	Established 2025 Quotas (g)
Schedule I	
-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20
1-(1-Phenylcyclohexyl)pyrrolidine	30
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30
1-[1-(2-Thienyl)cyclohexyl]piperidine	15
2'-fluoro 2-fluorofentanyl	30
1-Benzylpiperazine	25
1-Methyl-4-phenyl-4-propionoxypiperidine	10
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	30
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	30
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P)	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	100
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)	30
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)	30
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25
2,5-Dimethoxy-4-n-propylthiophenethylamine	25
2,5-Dimethoxyamphetamine	25
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)	30
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	30
3,4,5-Trimethoxyamphetamine	30
2-Methyl AP-237	30
3,4-Methylenedioxyamphetamine (MDA)	12,000
3,4-Methylenedioxymethamphetamine (MDMA)	12,000
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40
3,4-Methylenedioxy-N-methylcathinone (methylone)	5,200
3,4-Methylenedioxypyrovalerone (MDPV)	35
3-FMC; 3-Fluoro-N-methylcathinone	25
3-Methylfentanyl	30
3-Methylmethcathinone	30

3-Methylthiofentanyl	30
4,4′-Dimethylaminorex	30
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	5,100
4-Chloro-alpha-pyrrolidinovalerophenone (4-chloro-alpha-PVP)	25
4-CN-Cumyl-Butinaca	25
4-Fluoroisobutyryl fentanyl	30
4F–MDMB–BINACA	30
4-FMC; Flephedrone	25
4-MEC; 4-Methyl-N-ethylcathinone	25
4-Methoxyamphetamine	150
4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (alpha-PiHP)	30
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25
4-Methylaminorex	25
4-Methyl-N-methylcathinone (mephedrone)	45
4-Methyl-alpha-ethylaminopentiophenone (4-MEAP)	25
4-Methyl-alpha-pyrrolidinohexiophenone (MPHP)	25
4′-Methyl acetyl fentanyl	30
4-Methyl-α-pyrrolidinopropiophenone (4-MePPP)	25
4F–MDMB–BUTICA	30
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	40
5F-AB-PINACA ; (1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25
5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	25
5F-CUMYL-P7AICA; 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3carboximide	25
5F-CUMYL-PINACA	25
5F–EDMB–PICA	30
5F-EDMB-PINACA	25
5F-MDMB-PICA	25
5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	25
5F-APINACA; 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	25
5-Fluoro-PB-22; 5F-PB-22	25
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1Hindol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	25
5-Methoxy-3,4-methylenedioxyamphetamine	25
5-Methoxy-N,N-diisopropyltryptamine	25

5-Methoxy-N,N-dimethyltryptamine	11,000
AB-CHMINACA	30
AB-FUBINACA	50
AB-PINACA	30
ADB-BUTINACA	30
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	30
Acetorphine	25
Acetyl Fentanyl	100
Acetyl-alpha-methylfentanyl	30
Acetyldihydrocodeine	30
Acetylmethadol	25
Acryl Fentanyl	25
ADB–4en–PINACA	30
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	50
AH-7921	30
All other tetrahydrocannabinol	1,166,130
Allylprodine	25
Alphacetylmethadol	25
alpha-Ethyltryptamine	25
Alphameprodine	25
Alphamethadol	25
alpha-Methylfentanyl	30
alpha-Methylthiofentanyl	30
alpha-Methyltryptamine (AMT)	25
alpha-Pyrrolidinobutiophenone (α-PBP)	25
alpha-pyrrolidinoheptaphenone (PV8)	25
alpha-pyrrolidinohexabophenone (alpha-PHP)	25
alpha-Pyrrolidinopentiophenone (α-PVP)	25
Amineptine	30
Aminorex	25
Anileridine	20
APINCA, AKB48 (N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	25
Benzethidine	25
Benzylmorphine	30
Betacetylmethadol	25
beta-Hydroxy-3-methylfentanyl	30
beta-Hydroxyfentanyl	30
beta-Hydroxythiofentanyl	30
beta-Methyl fentanyl	30
beta′-Phenyl fentanyl	30
Betameprodine	25
Betamethadol	4
Betaprodine	25

Brorphine	30
Bufotenine	15
Butonitazene	30
Butylone	25
Butyryl fentanyl	30
Cathinone	40
Clonazolam	30
Clonitazene	25
Codeine methylbromide	30
Codeine-N-oxide	192
Crotonyl Fentanyl	25
CUMYL–PEGACLONE	30
Cyclopentyl Fentanyl	30
Cyclopropyl Fentanyl	20
Cyprenorphine	25
d-9-THC	1,523,040
Desomorphine	25
Dextromoramide	25
Diapromide	20
Diclazepam	30
Diethylthiambutene	20
Diethyltryptamine	25
Difenoxin	9,300
Dihydromorphine	639,954
Dimenoxadol	25
Dimepheptanol	25
Dimethylthiambutene	20
Dimethyltryptamine	20,000
Dioxyaphetyl butyrate	25
Dipipanone	25
Drotebanol	25
Ethylmethylthiambutene	25
Ethylone	25
Ethylphenidate	30
Etizolam	30
Etodesnitazene	30
Etonitazene	25
Etorphine	30
Etoxeridine	25
Eutylone	30
Fenethylline	30
Fentanyl carbamate	30
Fentanyl related substances	600
Flualprazolam	30
Flubromazolam	30

Flunitazene	30
FUB-144	25
FUB-AKB48	25
Fub-AMB, MMB-Fubinaca, AMB-Fubinaca	25
Furanyl fentanyl	30
Furethidine	25
gamma-Hydroxybutyric acid	49,675,266
Heroin	150
Hydromorphinol	40
Hydroxypethidine	25
Ibogaine	210
Isobutyryl Fentanyl	25
Isotonitazine	25
JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	45
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	45
JWH-081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole)	30
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30
Ketobemidone	30
Levomoramide	25
Levophenyacylmorphan	25
Lysergic acid diethylamide (LSD)	1,200
MAB-CHMINACA; ADB-CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	30
MDMB-CHMICA; MMB-CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	30
MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
MMB-CHMICA-(AMB-CHMCA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate	25
Marijuana	6,675,000
Marijuana extract	1,000,000
MDMB–4en–PINACA	30
MMB–FUBICA	30
Mecloqualone	30
Mescaline	1,200
Mesocarb	30
Methaqualone	60

Methcathinone	25
Methiopropamine	30
Methoxetamine	30
Methoxyacetyl fentanyl	30
Methyldesorphine	5
Methyldihydromorphine	25
Metodesnitazene	30
Metonitazene	30
Morpheridine	25
Morphine methylbromide	5
Morphine methylsulfonate	5
Morphine-N-oxide	150
MT-45	30
Myrophine	25
NM2201: Naphthalen-1-yl 1-(5-fluorpentyl)-1H-indole-3-carboxylate	25
N,N-Dimethylamphetamine	25
Naphyrone	25
N-Desethyl isotonitazene	30
N-Ethyl-1-phenylcyclohexylamine	25
N-Ethyl-3-piperidyl benzilate	10
N-Ethylamphetamine	24
N-Ethylhexedrone	25
N-Ethylpentylone, ephylone	30
N-Hydroxy-3,4-methylenedioxyamphetamine	24
Nicocodeine	25
Nicomorphine	25
N-methyl-3-piperidyl benzilate	30
N-piperidinyl etonitazene	30
N-Pyrrolidino Etonitazene	30
Noracymethadol	25
Norlevorphanol	2,550
Normethadone	25
Normorphine	40
Norpipanone	25
Ocfentanil	25
ortho-Fluoroacryl fentanyl	30
ortho-Fluorobutyryl fentanyl	30
Ortho-Fluorofentanyl,2-Fluorofentanyl	30
ortho-Fluoroisobutyryl fentanyl	30
ortho-Methyl acetylfentanyl	30
ortho-Methyl methoxyacetyl fentanyl	30
Para-Chlorisobutyrl fentanyl	30
Para-flourobutyryl fentanyl	25
Para-fluorofentanyl	25

para-Fluoro furanyl fentanyl	30
Para-Methoxybutyrl fentanyl	30
Para-methoxymethamphetamine	30
para-Methylfentanyl	30
Parahexyl	5
PB-22; QUPIC	20
Pentedrone	25
Pentylone	25
Phenadoxone	25
Phenampromide	25
Phenomorphan	25
Phenoperidine	25
Phenyl fentanyl	30
Pholcodine	5
Piritramide	25
Proheptazine	25
Properidine	25
Propiram	25
Protonitazene	30
Psilocybin	30,000
Psilocin	36,000
Racemoramide	25
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45
SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30
Tetrahydrofuranyl fentanyl	15
Thebacon	25
Thiafentanil	25
Thiofentanyl	25
Thiofuranyl fentanyl	30
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30
Tilidine	25
Trimeperidine	25
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25
U-47700	30
Valeryl fentanyl	25
Zipeprol	30

Schedule II

1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile	25
4-Anilino-N-phenethyl-4-piperidine (ANPP)	937,874
Alfentanil	5,000

Alphaprodine	25
Amobarbital	20,100
Bezitramide	25
Carfentanil	20
Cocaine	60,492
Codeine (for conversion)	942,452
Codeine (for sale)	19,262,957
d-amphetamine (for sale)	21,200,000
d,l-amphetamine	21,200,000
d-amphetamine (for conversion)	23,688,235
Dexmethylphenidate (for sale)	6,200,000
Dexmethylphenidate (for conversion)	5,374,683
Dextropropoxyphene	35
Dihydrocodeine	115,227
Dihydroetorphine	25
Diphenoxylate (for conversion)	14,100
Diphenoxylate (for sale)	770,800
Ecgonine	60,492
Ethylmorphine	30
Etorphine hydrochloride	32
Fentanyl	731,341
Glutethimide	25
Hydrocodone (for conversion)	1,250
Hydrocodone (for sale)	27,121,498
Hydromorphone	1,951,508
Isomethadone	30
L-amphetamine	30
Levo-alphacetylmethadol (LAAM)	25
Levomethorphan	30
Levorphanol	20,000
Lisdexamfetamine	32,736,000
Meperidine	681,184
Meperidine Intermediate-A	30
Meperidine Intermediate-B	30
Meperidine Intermediate-C	30
Metazocine	15
Methadone (for sale)	25,619,700
Methadone Intermediate	27,673,600
d,l-Methamphetamine	150
d-methamphetamine (for conversion)	485,020
d-methamphetamine (for sale)	47,000
l-methamphetamine	587,229
Methylphenidate (for sale)	53,283,000
Methylphenidate (for conversion)	19,975,468
Metopon	25

Moramide-intermediate	25
Morphine (for conversion)	2,393,200
Morphine (for sale)	20,805,957
Nabilone	62,000
Norfentanyl	25
Noroxymorphone (for conversion)	24,756,979
Noroxymorphone (for sale)	1,000
Oliceridine	25,100
Opium (powder)	250,000
Opium (tincture)	530,837
Oripavine	37,721,950
Oxycodone (for conversion)	437,827
Oxycodone (for sale)	53,584,449
Oxymorphone (for conversion)	31,773,105
Oxymorphone (for sale)	464,464
Pentobarbital	40,000,000
Phenazocine	25
Phencyclidine	35
Phenmetrazine	25
Phenylacetone	100
Piminodine	25
Racemethorphan	5
Racemorphan	5
Remifentanil	3,000
Secobarbital	172,100
Sufentanil	4,000
Tapentadol	10,390,226
Thebaine	57,137,944

List I Chemicals

Ephedrine (for conversion)	41,100
Ephedrine (for sale)	3,933,336
Phenylpropanolamine (for conversion)	14,878,320
Phenylpropanolamine (for sale)	7,990,000
Pseudoephedrine (for conversion)	1,000
Pseudoephedrine (for sale)	186,617,466

BILLING CODE C

The Administrator also establishes APQs for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Administrator may adjust the 2025 APQ and AAN as needed.

Signing Authority

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

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–30023 Filed 12–16–24; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 89 Tuesday,
No. 242 December 17, 2024

Part X

The President

Memorandum of December 12, 2024—Establishment of the China Censorship Monitor and Action Group
Memorandum of December 12, 2024—Establishment of the Countering Economic Coercion Task Force

Federal Register
Vol. 89, No. 242
Tuesday, December 17, 2024

Presidential Documents

Title 3—

The President

Memorandum of December 12, 2024

Establishment of the China Censorship Monitor and Action Group

Memorandum for the Heads of Executive Departments and Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to monitor and address the effects of any efforts by the People's Republic of China (PRC), either directly or through proxies, to censor or intimidate any United States person, it is hereby ordered as follows:

Section 1. *Policy.* Consistent with section 5515(b) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263, 22 U.S.C. 3363(b)) (the ''Act''), I am directing the Assistant to the President for National Security Affairs and the Director of the National Economic Council to lead an interagency effort to oversee the development and execution of an integrated Federal Government strategy to monitor and address the effects of any efforts by the PRC to censor or intimidate, in the United States or in any of its possessions or territories, any United States person, including a United States company that conducts business in the PRC, exercising its freedom of speech.

Sec. 2. *Establishment.* There is established within the Executive Office of the President the China Censorship Monitor and Action Group (Task Force).

Sec. 3. *Membership.* (a) The Task Force shall be chaired by the Assistant to the President for National Security Affairs, or his or her designee, and vice-chaired by the Director of the National Economic Council, or his or her designee.

(b) In addition to the Chair and the Vice Chair, the Task Force shall consist of representatives from the following executive departments and agencies (agencies), the heads of which shall designate or appoint personnel at the level of Assistant Secretary or above to participate in the Task Force:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of Agriculture;

(vi) the Department of Commerce;

(vii) the Department of Education;

(viii) the Department of Homeland Security;

(ix) the Office of the Director of National Intelligence;

(x) the Office of the United States Trade Representative;

(xi) the Central Intelligence Agency;

(xii) the Federal Bureau of Investigation; and

(xiii) other agencies and offices as the President may, from time to time, designate.

Sec. 4. *Mission and Function.* The Task Force shall meet not less frequently than twice per year to oversee the development and execution of the integrated Federal Government strategy described in section 5515(b)(3)(A) of the Act (22 U.S.C. 3363(b)(3)(A)). That strategy shall reflect the collective views of the members of the Task Force and shall be informed by consultations with agencies and independent agencies that are not represented on the Task Force; relevant stakeholders in the private sector and the media; and relevant stakeholders among foreign allies and partners of the United States.

Sec. 5. *Annual Report of the Task Force.* (a) Within 120 days of the date of this memorandum, the Task Force shall submit to the President and the appropriate congressional committees, as defined in section 5515(a)(1) of the Act (22 U.S.C. 3363(a)(1)), the strategy described in section 5515(b)(3)(A) of the Act.

(b) Within 180 days of the date of this memorandum, the Task Force shall submit to the President and the appropriate congressional committees, and make publicly available to the extent consistent with national security and other executive branch confidentiality interests, the first annual report described in section 5515(b)(6)(A)–(B) of the Act (22 U.S.C. 3363(b)(6)).

(c) Within 1 year of submitting the first annual report described in subsection (b) of this section, and every year thereafter, the Task Force shall submit to the President and the appropriate congressional committees, and make publicly available to the extent consistent with national security and other executive branch confidentiality interests, the required follow-on annual reports described in section 5515(b)(6)(A)–(B) of the Act, until the requirement terminates as specified in section 5515(d) of the Act (22 U.S.C. 3363(d)).

Sec. 6. *Definition.* For purposes of this memorandum, the term ''United States person'' shall have the meaning provided in section 5515(a)(3) of the Act (22 U.S.C. 3363(a)(3)).

Sec. 7. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

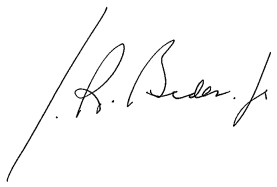
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Attorney General is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, December 12, 2024

[FR Doc. 2024–30203
Filed 12–16–24; 11:15 am]
Billing code 4410–19–P

Presidential Documents

Memorandum of December 12, 2024

Establishment of the Countering Economic Coercion Task Force

Memorandum for the Heads of Executive Departments and Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve efforts to respond to coercive economic practices of countries of concern, including the People's Republic of China (PRC), it is hereby ordered as follows:

Section 1. *Policy.* Consistent with section 5514 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263, 22 U.S.C. 3362) (the ''Act''), I am directing the Assistant to the President for National Security Affairs and the Director of the National Economic Council to oversee an interagency effort to address the increasing use of economic coercion by countries of concern, including the PRC; to assess potential vulnerabilities of countries, including within their private sectors, to such coercion; and to develop concrete recommendations for a comprehensive, effective, and, as appropriate, multilateral response, including to deter future coercive economic behavior.

Sec. 2. *Establishment.* There is established within the Executive Office of the President the Countering Economic Coercion Task Force (Task Force).

Sec. 3. *Membership.* (a) The Task Force shall be chaired by the Assistant to the President for National Security Affairs, or his or her designee, and vice-chaired by the Director of the National Economic Council, or his or her designee.

(b) In addition to the Chair and the Vice Chair, the Task Force shall consist of representatives from the following executive departments and agencies (agencies), the heads of which shall designate or appoint personnel at the level of Assistant Secretary or above to participate in the Task Force:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of Agriculture;

(vi) the Department of Commerce;

(vii) the Department of Labor;

(viii) the Department of Health and Human Services;

(ix) the Department of Energy;

(x) the Department of Homeland Security;

(xi) the Office of the Director of National Intelligence;

(xii) the Office of the United States Trade Representative;

(xiii) the Central Intelligence Agency;

(xiv) the United States Agency for International Development;

(xv) the Export-Import Bank of the United States;

(xvi) the Trade and Development Agency;

(xvii) the United States International Development Finance Corporation; and

(xviii) other agencies and offices as the President may, from time to time, designate.

Sec. 4. *Mission and Function.* The Task Force shall work across agencies and offices to oversee the development and implementation of an integrated United States Government strategy to respond to and deter coercive economic practices by countries of concern, including the PRC. That strategy shall include the elements outlined in section 5514(c)(1)(A) of the Act (22 U.S.C. 3362(c)(1)(A)) and shall, consistent with section 5514(c)(2) of the Act (22 U.S.C. 3362(c)(2)), be informed by consultations with relevant stakeholders, including, as necessary and appropriate, stakeholders in the private sector, agencies that are not represented on the Task Force, and foreign allies and partners of the United States. The Task Force shall also perform the other responsibilities set forth in section 5514(c)(1) of the Act (22 U.S.C. 3362(c)(1)).

Sec. 5. *Reporting on the Work and Recommendations of the Task Force.* (a) Within 180 days of the date of this memorandum, the Task Force shall submit to the Congress the initial report described in section 5514(e)(1) of the Act (22 U.S.C. 3362(e)(1)).

(b) Within 1 year of submitting the initial report described in subsection (a) of this section, the Task Force shall submit to the Congress the first interim report described in section 5514(e)(2)(A) of the Act (22 U.S.C. 3362(e)(2)(A)).

(c) Within 1 year of submitting the first interim report described in subsection (b) of this section, the Task Force shall submit to the Congress the second interim report described in section 5514(e)(2)(B) of the Act (22 U.S.C. 3362(e)(2)(B)).

(d) Within 30 days of submitting the second interim report described in subsection (c) of this section, the Task Force shall submit to the Congress the final report described in section 5514(e)(3) of the Act (22 U.S.C. 3362(e)(3)).

(e) The Task Force shall also consolidate any input received and submit periodic recommendations to the President on policies and regulatory actions to address systemic harms from PRC economic coercion.

Sec. 6. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

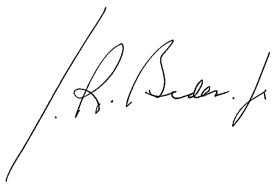
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Attorney General is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, December 12, 2024

[FR Doc. 2024–30208
Filed 12–16–24; 11:15 am]
Billing code 4410–19–P

Reader Aids

Federal Register

Vol. 89, No. 242

Tuesday, December 17, 2024

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

95077–95716 2
95717–96088 3
96089–96512 4
96513–96854 5
96855–97458 6
97459–99058 9
99059–99688 10
99689–100288 11
100289–100716 12
100717–101462 13
101463–101836 16
101837–102672 17

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Title 2 101463
Ch. XIX 99695
5801 101837

3 CFR

Proclamations:
10864 95077
10865 96087
10866 96513
10867 96515
10868 96855
10869 99689
10870 100289
10871 100299

Administrative Orders:
Memorandums:
Memorandum of November 15, 2024 99691
Memorandum of November 20, 2024 99693
Memorandum of December 11, 2024 101835
Memorandum of December 12, 2024 102665
Memorandum of December 12, 2024 102669
Notices:
Notice of December 11, 2024 100717
Notice of December 11, 2024 100719

5 CFR

532 100721
630 102256
752 102256

7 CFR

271 102342
273 ..... 96517, 102342
331 101837
1240 99059
1942 96857
3201 97459
3202 97459
3550 95079
3560 ..... 96857, 96860
3570 96857
4270 97459
5001 ..... 96857, 97477

Proposed Rules:
273 95724
985 96126
1000 95466
1001 95466
1005 95466
1006 95466
1007 95466
1030 95466
1032 95466
1033 95466
1051 95466
1124 95466
1126 95466
1131 95466
1170 95466
1240 99149
1944 96130

8 CFR

214 95626
274a 95626, 101208

9 CFR

121 101837

10 CFR

420 100301
429 100302
430 100722
1008 ..... 101846, 101850

Proposed Rules:
50 100921
52 100921

12 CFR

1026 95080
1090 99582

Proposed Rules:
Ch. I 99751
Ch. II 99751
Ch. III 99751
1022 ..... 100922, 101402
1102 96912

13 CFR

121 102448
124 ..... 96089, 102448
125 102448
126 ..... 96089, 102448
127 ..... 96089, 102448
128 ..... 96089, 102448
134 ..... 96089, 102448

14 CFR

25 ..... 100723, 100727
27 100730
33 101854
39 ..... 95086, 95088, 95090, 95092, 95095, 95098, 95717, 96517, 96863, 97477, 97480, 97482, 97484, 97492, 97494, 97497, 97499, 97502, 97505, 97507, 99696, 100734
71 ..... 95100, 95719, 96520, 96521, 96522, 96866, 96868, 96870, 96871, 97510, 99064, 99700, 100302, 100737,

100738
95.....97512
97 .....99065, 99067, 101463, 101464
129.....101870
382.....102398

Proposed Rules:
39 .....95139, 96618, 97562, 97564, 99169, 100923, 100926, 102016, 102019
71 .....95141, 96619, 97567, 97569, 97572, 97574, 99172, 99173, 101545
183.....96621
Ch. II.....99706

15 CFR

732.....96095, 96790
734.....96095, 96790
736.....96095, 96790
740.....96095, 96790
742.....96095, 96790
744 .....96095, 96790, 96830, 99702
746.....96095, 96790
748.....96095, 96830
758.....96095, 96790
762.....96095, 96790
772.....96095, 96790
774.....96095, 96790
791.....96872
922.....95101
1400.....101466

16 CFR

310.....99069

17 CFR

40.....96897
200.....101467
275.....96095

Proposed Rules:
Ch. II.....99175

18 CFR

4.....96524
5.....96524
6.....96524
7.....96524
35.....97174
284.....97518

19 CFR

Ch. 1.....96898
351.....101694
356.....100303

20 CFR

655.....95626
726.....100304

21 CFR

510.....95101
520.....95101
522.....95101
524.....95101
558.....95101

Proposed Rules:
179.....100404

22 CFR

42.....99076
122.....99081
129.....99081
518.....99695

24 CFR

5.....96898, 101880
200.....100739
203.....99705
206.....99705
247.....101270
291.....99705
880.....101270
883.....96096
884.....101270
886.....101270
891.....101270
966.....101270

25 CFR

1000.....100228

26 CFR

1 .....95108, 99782, 100598, 101881

Proposed Rules:
1 .....95362, 95727, 96143, 100138
301.....96622

27 CFR

26.....96901
31.....96901

Proposed Rules:
9.....96623

28 CFR

50.....97525
543.....101881, 101882

Proposed Rules:
25.....100404, 100424
545.....102022

29 CFR

531.....101884
1926.....100321
4902.....96531

Proposed Rules:
525.....96466

30 CFR

18.....99085
74.....99085

31 CFR

1.....101887
588.....96901

33 CFR

100 .....96098, 96902, 97538, 100743, 101468
110.....96099, 101469
165 .....95720, 96101, 96533, 97539, 97541, 100346, 100743, 101471, 101473, 101475, 101889, 101892
181.....97356

36 CFR

1.....96535
14.....96535

Proposed Rules:
73.....96144

37 CFR

201.....100348
380.....96904

Proposed Rules:
1.....96152
201.....100439

38 CFR

Proposed Rules:
17.....102031
9.....96627
71.....97404

39 CFR

111.....100745

Proposed Rules:
3041.....100440

40 CFR

9.....100361
52 .....95117, 95121, 95126, 96103, 96554, 96905, 97543, 99105, 100377, 101475, 101477, 101479, 101894, 101896
62.....100092, 101481
63.....96106
75.....99105
78.....99105
81 .....97545, 101483, 101896, 101901, 101910
82.....99720
84.....100381
97.....99105
131.....101914
174 ....100746, 100749, 101938
180.....95131, 96566
261.....99727
262.....99727
266.....99727
282.....97550
300.....100751
716.....100756
721.....100361
745.....101489
751.....102568

Proposed Rules:
52 .....96152, 99177, 99180, 99790, 102034
60.....101306
80.....100442
81.....99790
122.....100929
180.....97577, 99184
282.....97578
721.....95688, 102046
1515.....99799
1516.....99799

42 CFR

11.....97558
52i.....96119
73.....101941
93.....95136
401.....97710
405.....97710
410.....97710
411.....97710
414.....97710
423.....97710
424.....97710
425.....97710
427.....97710
428.....97710
491.....97710
512.....96280

Proposed Rules:
417.....99340
422.....99340
423.....99340
460.....99340
1000.....95143
1001.....95143

45 CFR

46.....95136
73.....95136
162.....100763
170.....101772
171.....101772, 102512
172.....101772
302.....100789
303.....100789
304.....100789
309.....100789
1355.....96569

Proposed Rules:
2550.....100456
2551.....100456
2552.....100456
2553.....100456

46 CFR

1.....102298
10.....102298
11.....102298
12.....102298
13.....102298
14.....102298
15.....102298
16.....102298
25.....97356
28.....97356
67.....101490
108.....97356
117.....97356
133.....97356
141.....97356
160.....97356
169.....97356
180.....97356
199.....97356
401.....100810

47 CFR

1.....95136, 100838
2.....96590, 100856
4.....101500
11.....100868
14.....100878
25 .....96124, 96590, 100898
30.....100856
54.....101358
64.....100878
73.....100392, 100868
74.....100868
90.....97559, 100838
95.....100838
97.....100838

Proposed Rules:
54.....96166
73.....101547

48 CFR

Ch. 1.....101820, 101832
1.....101821
2.....101828
6.....101828
9.....101828
12.....101821
13.....101831
18.....101828
19.....101828
22.....101821
25.....101831
36.....101831
47.....101821

49.....101831
52 .....101821, 101828, 101831

49 CFR

513.....101952
571.....96125, 99732

Proposed Rules:

40.....97579
383.....96176

50 CFR

17 .....96602, 99129, 99656
29.....99732
216.....100393
223.....101993
224.....101993
260.....101501
300.....96906, 100917
622.....100918
648 .....95138, 95723, 96616, 96910, 97560, 99138, 100402, 100919
600.....102000
660.....101514
697.....99147

Proposed Rules:

17 .....99207, 99809, 100662, 100934, 101100, 102074
80.....95590
216.....102091
224.....100458
300.....96631, 102091
622.....102100
635.....102091
679.....96186

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 16, 2024

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__*layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.